No. 4140

1367 United States 1367

Circuit Court of Appeals

For the Ninth Circuit.

NORWICH UNION FIRE INSURANCE SOCIETY, LIMITED, of Norwich and London, England, a Corporation,

Plaintiff in Error,

vs.

LEO BROTHERS COMPANY, a Corporation,

Defendant in Error,

and

THE NEW BRUNSWICK FIRE INSURANCE COMPANY, a Corporation,

Plaintiff in Error,

vs.

LEO BROTHERS COMPANY, a Corporation,

Defendant in Error.

Transcript of Record.

Upon Writs of Error to the United States District Court of the District of Idaho, Central Division.

Filmer Bros. Co. Print, 330 Jackson St., S. F., Cal.

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INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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In the District Court of the Second Judicial District of the State of Idaho, in and for Latah County.

LEO BROTHERS COMPANY, a Corporation,
Plaintiff,

vs.

NORWICH UNION FIRE INSURANCE SOCIETY, LIMITED, of Norwich and London, England, a Corporation,
Defendant.

Complaint.

Comes now the above-named plaintiff and for cause of action against the defendant, alleges:

I.

That at all the times herein mentioned the plaintiff has been and now is a corporation organized under the laws of the State of Idaho with its principal place of business and head office in Moscow, Latah County, Idaho, and has been and now is engaged in the operation of a cider and vinegar plant and has been and now is manufacturing cider and vinegar, at Moscow, Idaho.

II.

That at all the times herein mentioned the defendant has been and now is a corporation organized under the laws of England, with its principal place of business and head office in Norwich, England, and has been and now is engaged in the general fire insurance business and has been and now is authorized to conduct its said business in the

United States and plaintiff is informed and believes and upon such information and belief alleges the truth to be that the defendant has complied with all the laws of the State of Idaho regarding foreign corporations and fire insurance companies doing business in the State of Idaho and has been and now is authorized to conduct and carry on its said business within the State of Idaho, and to make and enter into contracts of indemnity against loss by fire and issue and [1*] deliver fire insurance policies in conformity with and agreeable to the laws of the State of Idaho.

III.

That at all times herein mentioned, Fred Veatch and M. J. Veatch have been and now are copartners doing business at Moscow, Latah County, Idaho, under the name and style of Veatch Realty Co., and that said copartnership has been and now is engaged in the business of writing fire insurance.

IV.

That during all the times herein mentioned, the said Veatch Realty Co., has been and now is the duly appointed and authorized agent of the defendant at Moscow, Latah County, Idaho, and is authorized as such agent to make, issue and deliver to patrons of defendant its policies of insurance, indemnifying against loss by fire.

V.

That the buildings and premises in which plaintiff has been and now is conducting and carrying on

*Page-number appearing at foot of page of original certified Transcript of Record

its said business are located at the southeast corner of the intersection of Main and C Streets, in Moscow, Idaho, and that upon the 21st day of December, 1920, and while plaintiff was the owner of said building and the contents thereof, the defendant acting by its duly authorized agent, Veatch Realty Co., did, upon the consideration of the stipulations therein named, and of $225.00 premium thereon, make, execute and deliver to the plaintiff its policy of insurance, No. 1064, whereby it, the defendant, did insure plaintiff, for the term of one year from the 21st day of December, 1920, at noon, to the 21st day of December, 1921, at noon, against any direct loss of merchandise of every description, consisting principally of vinegar and vinegar stock, or any damage thereto, by fire, in an amount not exceeding $5,000.00, while contained in said building, and which said building is described in said policy of insurance as located at No. 244 on the east side of Main Street, between "A" and "C" Streets, in Moscow, Idaho, and as being located in Block 102, [2] No. 244, according to Sanborn's Fire Insurance Map of Moscow, Idaho, and that said building was described in said policy of insurance as a three story composition roof, brick and frame building and its additions of like construction communicating and in contact therewith. That a true and correct copy of said policy of insurance is hereunto attached and made a part hereof and plaintiff asks that in all proceedings herein said policy of insurance may be read and all its terms and conditions be considered with the same force and effect, as if

the legal effect thereof were pleaded herein by affirmative allegations.

VI.

That said policy of insurance so executed and delivered to the plaintiff permitted other concurrent insurance upon said building, and the contents thereof, and defendant did thereby promise and agree that in the event of the direct loss of or damage to said merchandise while contained in said building, by fire, it would pay plaintiff its share or portion thereof.

VII.

That long prior to July 6th, 1921, plaintiff paid to defendant and defendant has accepted and received from plaintiff the said consideration for said policy of insurance, to wit, the sum of $225.00 the premium thereon.

VIII.

That after the issuance and delivery of said policy of insurance to plaintiff, as above set forth, and on or about the 6th day of July, 1921, and while plaintiff was the owner thereof, said building was partially destroyed, and the merchandise contained therein, consisting principally of vinegar and vinegar stock, was wholly destroyed by fire, for the origin of which plaintiff was in no way or manner responsible, and that when so destroyed by fire there was other concurrent insurance upon said merchandise under certain policies of insurance issued by other insurance companies in the amount of $26,000.00, and that plaintiff's loss upon said merchandise by said fire amounted to $31,000.00

and that the amount thereof for which the defendant became and now [3] is liable to and is now owing plaintiff under its said policy of insurance No. 1064, is $5,000.00.

IX.

That upon the occurrence of said fire the plaintiff gave the defendant immediate notice of the loss thereby in writing and within sixty days after the fire, rendered a statement to the defendant, signed and sworn to by plaintiff, stating the knowledge and belief of plaintiff as to the time and origin of said fire, the interest of plaintiff in the property and the amount of loss thereon, all other insurance covering said merchandise or any part thereof, and a copy of all the descriptions and schedules in all policies thereon, by whom and for what purpose the said building and the several parts thereof were occupied at the time of said fire and complied with all the terms and conditions in said policy of insurance contained by it to be kept and performed in case of a loss thereof, or injury thereto by fire.

X.

That it is provided in said policy of insurance that the sum for which defendant is liable pursuant to said policy, shall be payable sixty days after due notice and proof of loss; that this plaintiff gave said notice required by the terms of said policy and made said proof of loss and delivered the same to the defendant on the 29th day of August, 1921, and more than sixty days have elapsed since making said proof of loss as required by the terms of said policy, and that the defendant has not paid its said loss to the plaintiff, or any part or portion thereof.

XI.

That by reason of the premises plaintiff alleges that the defendant is indebted to the plaintiff in the sum of $5,000.00 with interest thereon from October, 29th, 1921, at the rate of 7% per annum, no part of which has been paid.

WHEREFORE, plaintiff prays judgment against the defendant for the sum of $5,000.00, with interest thereon from and after the [4] 29th day of October, 1921, until the entry of judgment herein, at the rate of seven per cent per annum, and for its costs and disbursements herein sustained.

FRANK L. MOORE,

Attorney for Plaintiff, Residing at Moscow, Idaho.

(Duly verified.) [5]

Exhibit "A."

No. 1064

Standard Fire
Insurance Policy
Stock Company

Amount, $5000.00
Term, 1—year.
Rate, 250
Premium, $225.00

Founded 1797

NORWICH UNION
FIRE
INSURANCE SOCIETY LIMITED,
of Norwich and London, England.
Pacific Coast Department.
San Francisco, California.

IN CONSIDERATION of the stipulations herein named and of Two Hundred Twenty-five and

No/100 DOLLARS PREMIUM, Does insure LEO BROTHERS COMPANY, for the term of One Year from the 21st day of December, 1920, at noon, to the 21st day of December, 1921, at noon, against all direct loss or damage by fire except as hereinafter provided, to an amount not exceeding FIVE THOUSAND AND NO/100 Dollars, to the following described property while located and contained as described herein and not elsewhere, to wit:

Standard Forms Bureau Form 367 (May 1918)

MERCHANDISE AND FIXTURES FORM.

On the following described property, all situate at No. 244 on the East side of Main Street, between "A" and "C" Streets, in Moscow, Idaho.

*1 $5000.00 On merchandise of every description, consisting principally of Vinegar & Vinegar stock manufactured or in process of manufacture, and on materials for manufacturing same, including packages, labels, cases, boxes and all wrapping and packing materials, being the property of insured or sold but not removed; and (PROVIDED the insured shall be liable by law for loss or damage thereto or shall have specifically assumed liability therefor), this insurance shall also cover merchandise held in trust, or in commission, or left for storage or repairs; all only while contained in the three story comp.

roof, brick & frame building and its additions (if any) of like construction communicating and in contact therewith, situate as above.

*2 $Nil On store, office and workshop furniture and fixtures and equipment, and on awnings, implements, signs and tools; and on supplies incidental to the business of insured not described under Item 1 above; all only while contained in, on or attached to above described building and its additions (if any) of like construction communicating and in contact therewith. [6]

*3 $ Nil On .....

*4 $ Nil On .....

.....

*No insurance attaches under any of the above items unless a certain amount is specified and inserted in the blank immediately preceding the item.

Loss or damage for which insured shall be liable by law, or for which insured shall have specifically assumed liability, under item 1 above, shall be adjusted with and payable to the insured named in this policy.

"RESTRICTION IN CASE OF SPECIFIC INSURANCE." No article or piece of personal property separately insured for a specific amount under this, or any other policy, is covered by this policy except for such specific amount, if any,

named herein; nor shall this company be liable for loss to merchandise of others for which the insured is liable by law or shall have specifically assumed in this policy.

"SIDEWALK CLAUSE." It is understood that property above described is also covered under its respective items, on sidewalks, platforms and alleyways pertaining to above described building, only while in daily transit to and from said building.

Other insurance permitted.

The Provisions Printed on the Back of This Form are Hereby Referred to and Made a Part Hereof.

Attached to Policy No. 1064 of the Norwich Union Fire Ins. Co. Agency—Moscow, Idaho.

Dated December 21, 1920.

Insurance Map
Sheet 4
Block 102
No. 244

VEATCH REALTY CO.,
Agent.

For other provisions see reverse side of this rider.

PROVISIONS REFERRED TO IN AND MADE PART OF THIS RIDER (No. 367).

"PERMITS." Permission granted to make alteration or repairs to the above described building without limit of time, and to build additions, and if of like construction and communicating and in contact therewith, this policy shall cover in same under its respective items; permission also granted to do such work in said building as the nature of the

occupancy may require; to work at any and all times; and, when not in violation of law or ordinance, to generate illuminating gas or vapor, and to keep and use of the necessary quantities of all articles, things and materials incidental to the business conducted therein and for the operation of said building, it being warranted by insured that no artificial light (other than incandescent electric light) be permitted in the room when the reservoir of any machine or device using petroleum or any of its products of greater inflammability than kerosene oil is being filled or drawn on. A breach of this warranty suspends this insurance during such breach. But notwithstanding anything herein contained, the use, keeping, allowing, or storing on the within described premises of dynamite, fireworks, Greek fire, gunpowder in excess of fifty pounds, nitro glycerine or other explosives is prohibited and shall wholly suspend this policy during the period such use, keeping, allowing or storing shall continue unless a specific permit therefor is attached to this policy.

"LIGHTNING CLAUSE." This policy shall cover any direct loss or damage by lightning (meaning thereby the commonly accepted [7] use of the term "lightning" and in no case to include loss or damage by cyclone, tornado or windstorm), not exceeding the sum insured nor the interest of the insured in the property, and subject in all other respects to the terms and conditions of this policy; Provided, however, that if there shall be any other insurance on said property, this company shall be

liable only *pro rata* with such other insurance for any direct loss by lightning whether such other insurance be against direct loss by lightning or not.

"ELECTRICAL EXEMPTION CLAUSE." If dynamos, wiring, lamps, motors, switches or other electrical appliances or devices are insured by this policy, this insurance shall not cover any immediate loss or damage to dynamos, exciters, lamps, motors, switches, or any other apparatus for generating, utilizing, testing, regulating, or distributing electricity, caused directly by electric currents therein, whether artificial or natural.

THIS POLICY IS MADE AND ACCEPTED subject to the foregoing stipulations and conditions, and to the following stipulations and conditions printed on the back hereof, which are hereby specially referred to and made a part of this policy, together with such other provisions, agreements, or conditions as may be indorsed hereon or added hereto; and no officer, agent, or other representative of this Society shall have power to waive any provision or condition of this policy except such as by the terms of this policy may be the subject of agreement indorsed hereon or added hereto; and as to such provisions and conditions, no officer, agent, or representative shall have such power or be deemed or held to have waived such provisions or conditions unless such waiver, if any, shall be written upon or attached hereto, nor shall any privilege or permission affecting the insurance under this policy exist or be claimed by the insured unless so written or attached.

Provisions as required by law to be stated in this Policy. This policy is in a stock corporation.

IN WITNESS WHEREOF, this Society has executed and attested these presents; but this policy shall not be valid unless countersigned by the duly authorized Agent of the Society at Moscow, Idaho, 1045.

NORWICH UNION FIRE INSURANCE SOCIETY, LTD.,

By: their Attorney: J. L. FULLER,
Manager of the Pacific Coast Dept.

COUNTERSIGNED at Moscow, Idaho, this 21st day of December, A. D. 1920.

VEATCH REALTY CO.,
Agent. [8]

This society shall not be liable beyond the actual cash value of the property at the time any loss or damage occurs, and the loss or damage shall be ascertained or estimated according to such actual cash value, with proper deduction for depreciation however caused; and shall in no event exceed what it would then cost the insured to repair or replace the same with material of like kind and quality; said ascertainment or estimate shall be made by the insured and this society, or, if they differ, then by appraisers, as hereinafter provided; and, the amount of loss or damage having been thus determined, the sum for which this company is liable pursuant to this policy shall be payable sixty days after due notice, ascertainment, estimate and satisfactory proof of the loss have been received by this company in accordance with the terms of this pol-

icy. It shall be optional, however, with this company to take all, or any part, of the articles at such ascertained or appraised value, and also to repair, rebuild, or replace the property lost or damaged, with other of like kind and quality within a reasonable time on giving notice, within thirty days after the receipt of the proof herein required, of its intention so to do; but there can be no abandonment to this company of the property described.

This entire policy shall be void if the insured has concealed or misrepresented, in writing or otherwise, any material fact or circumstance concerning this insurance or the subject thereof; or if the interest of the insured in the property be not truly stated herein; or in case of any fraud or false swearing by the insured touching any matter relating to this insurance or the subject thereof whether before or after a loss.

This entire policy, unless otherwise provided by agreement endorsed hereon or added hereto, shall be void if the insured now has or shall hereafter make or procure any other contract of insurance, whether valid or not, on property covered in whole or in part by this policy; or if the subject of insurance be a manufacturing establishment and it be operated in whole or in part at night later than ten o'clock, or if it cease to be operated for more than ten consecutive days; or if the hazard be increased by any means within the control or knowledge of the insured; or if mechanics be employed in building, altering or repairing the within described premises for more than fifteen days at any one time;

or if the interest of the insured be other than unconditional and sole ownership; or if the subject of insurance be a building on ground not owned by the insured in fee simple, or if the subject of insurance be personal property and be or become incumbered by a chattel mortgage; or if, with the knowledge of the insured, foreclosure proceedings be commenced or notice given of sale of any property covered by this policy by virtue of any mortgage or trust deed; or if any change, other than by the death of an insured, take place in the interest, title, or possession of the subject of insurance (except change of occupants without increase of hazard) whether by legal process or judgment or by voluntary act of the insured, or otherwise; or if this policy be assigned before a loss; or if illuminating gas or vapor be generated in the described building (adjacent thereto) for use therein; or if (any usage or custom of trade or manufacture to the contrary notwithstanding) there be kept, used, or allowed on the above described premises, benzine, benzole, dynamite, ether, fireworks, gasoline, greek fire, gunpowder exceeding twenty-five pounds in quantity, naptha, nitro-glycerine or other explosives, phosphorus, or petroleum or any of its products of greater inflammability than kerosene oil of the United States Standard (which last may be used for lights and kept for sale according to law but in quantities not exceeding five barrels, provided it be drawn and lamps filled by daylight or at a distance not less than ten feet from artificial light); or if a building herein described, whether intended

for occupancy by owner or tenant, be or become vacant or unoccupied and so remain for ten days. [9]

This society shall not be liable for loss caused directly or indirectly by invasion, insurrection, riot, civil war or commotion or military or usurped power, or by order of any civil authority; or by theft; or by neglect of the insured to use all reasonable means to save and preserve the property at and after a fire or when the property is endangered by fire in neighboring premises; or (unless fire ensues, and, in that event, for the damage by fire only) by explosion of any kind, or lightning; but liability for direct damage by lightning may be assumed by specific agreement hereon.

If a building or any part thereof fall, except as the result of fire, all insurance by this policy on such building or its contents shall immediately cease.

This society shall not be liable for loss to accounts, bills, currency, deeds, evidences of debt, money, notes, or securities; nor, unless liability is specifically assumed hereon, for loss to awnings, bullion, casts, curiosities, drawings, dies, implements, jewels, manuscripts, medals, models, patterns, pictures, scientific apparatus, signs, store or office furniture or fixtures, sculpture, tools, or property held on storage or for repairs; nor, beyond the actual value destroyed by fire, for loss occasioned by ordinance or law regulating construction or repair of buildings, or by interruption of business, manufacturing processes, or otherwise; nor for any

greater proportion of the value of plate glass, frescoes, and decorations than that which this policy shall bear to the whole insurance on the building described.

If any application, survey, plan, or description, of property be referred to in this policy it shall be a part of this contract and a warranty by the insured.

In any matter relating to this insurance no person, unless duly authorized in writing, shall be deemed the agent of this company.

This policy may by a renewal be continued under the original stipulations, in consideration of premium for the renewed term, provided that any increase of hazard must be made known to this company at the time of renewal or this policy shall be void.

This policy shall be cancelled at any time at the request of the insured; or by the company by giving five days' notice of such cancellation. If this policy shall be canceled as hereinbefore provided, or become void or cease, the premium having been actually paid, the unearned portion shall be returned on surrender of this policy or last renewal, this company retaining the customary short rate; except that when this policy is canceled by this company by giving notice it shall retain only the *pro rata* premium.

If, with the consent of this company, an interest under this policy shall exist in favor of a mortgagee or of any person or corporation having an interest in the subject of insurance other than the interest

of the insured as described herein, the conditions hereinbefore contained shall apply in the manner expressed in such provisions and conditions of insurance relating to such interest as shall be written upon, attached, or appended hereto.

If property covered by this policy is so endangered by fire as to require removal to a place of safety, and is so removed, that part of this policy in excess of its proportion of any loss and of the value of property remaining in the original location, shall, for the ensuing five days only, cover the property so removed in the new location; or removed to more than one location, such excess of this policy shall cover therein for such five days in the proportion that the value in any one such new location bears to the value in all such new locations; but this company shall not, in any case of removal, whether to one or more locations, be liable beyond the proportion that the amount hereby insured shall bear to the total insurance on the whole property at the time of fire, whether the same cover in new location or not. [10]

If fire occur the insured shall give immediate notice of any loss thereby in writing to this company, protect the property from further damage, forthwith separate the damaged and undamaged personal property, put it in the best possible order, make a complete inventory of the same, stating the quantity and cost of each article and the amount claimed thereon; and, within sixty days after the fire, unless such time is extended in writing by this company, shall render a statement to this company,

signed and sworn to by said insured, stating the knowledge and belief of the insured as to the time and origin of the fire; the interest of the insured and of all others in the property; the cash value of each item thereof and the amount of loss thereon; all incumbrances thereon; all other insurance, whether valid or not, covering any of said property; and a copy of all the descriptions and schedules in all policies; any changes in the title, use, occupation, location, possession, or exposures of said property since the issuing of this policy; by whom and for what purpose any building herein described and the several parts thereof were occupied at the time of fire; and shall furnish, if required, verified plans and specifications of any building, fixtures, or machinery destroyed or damaged; and shall also, if required furnish a certificate of the magistrate or notary public (not interested in the claim as a creditor or otherwise, nor related to the insured) living nearest the place of fire, stating that he has examined the circumstances and believes the insured has honestly sustained loss to the amount that such magistrate or notary public shall certify.

The insured, as often as required, shall exhibit to any person designated by this company all that remains of any property herein described, and submit to examinations under oath by any persons named by this company and subscribe the same; and, as often as required, shall produce for examination all books of account, bills, invoices, and other vouchers, or certified copies thereof if originals be lost, at such reasonable place as may be designated

by this company or its representative, and shall permit extracts and copies thereof to be made.

In the event of disagreement as to the amount of loss the same shall, as above provided, be ascertained by two competent and disinterested appraisers, the insured and this company each selecting one, and the two so chosen shall first select a competent and disinterested umpire; the appraisers together shall then estimate and appraise the loss, stating separately sound value and damage, and failing to agree, shall submit their differences to the umpire; and the award in writing of any two shall determine the amount of such loss; the parties thereto shall pay the appraiser respectively selected by them and shall bear equally the expenses of the appraisal and umpire.

This society shall not be held to have waived any provision or condition of this policy or any forfeiture thereof by any requirement act, or proceeding on its part relating to the appraisal or to any examination herein provided for; and the loss shall not become payable until sixty days after the notice, ascertainment, estimate and satisfactory proof of the loss herein required have been received by this company, including an award by appraisers when appraisal has been required.

This society shall not be liable under this policy for a greater portion of any loss on the described property, or for loss by and expenses of removal from premises endangered by fire, than the amount hereby insured shall bear to the whole insurance, whether valid or not, or by solvent or insolvent in-

surers, covering such property, and the extent of the application of the insurance under this policy or of the contribution to be made by this company in case of loss, may be provided for by agreement or condition written hereon or attached or appended hereto. Liability for reinsurance shall be as specifically agreed hereon. [11]

If this society shall claim that the fire was caused by the act or neglect of any person or corporation, private or municipal, this society shall, on payment of the loss, be subrogated to the extent of such payment to all right of recovery by the insured for the loss resulting therefrom, and such right shall be assigned to this society by the insured on receiving such payment.

No suit or action on this policy, for the recovery of any claim, shall be sustainable in any court of law or equity until after full compliance by the insured with all the foregoing requirements, nor unless commenced within twelve months next after the fire.

Wherever in this policy the word "insured" occurs it shall be held to include the legal representative of the insured, and wherever the word "loss" occurs, it shall be deemed the equivalent of "loss or damage."

If this policy be made by a mutual or other company having special regulations lawfully applicable to its organization, membership, policies or contracts of insurance, such regulations shall apply to and form a part of this policy as the same may be

written or printed upon, attached, or appended hereto.

[Endorsed]:

Moscow, Idaho, 21st December, '20.

STANDARD FIRE INSURANCE POLICY.

No. 1064.

Expires Dec. 21, 1921.
Location Vinegar & Vinegar Stock.
Amount $5000.00. Premium $225.00.

Rate 250.

Name of Insured:

LEO BROTHERS COMPANY.

NORWICH UNION FIRE INSURANCE SOCIETY LIMITED.

U. S. District Court, District of Idaho. Filed Jan. 28, 1922. W. D. McReynolds, Clerk. [12]

In the United States District Court for the District of Idaho, Central Division.

LEO BROTHERS COMPANY, a Corporation,
Plaintiff,

vs.

NORWICH UNION FIRE INSURANCE SOCIETY, LIMITED, of Norwich and London, England, a Corporation,
Defendant.

Stipulation Waiving Jury.

It is hereby agreed and stipulated by and between the parties hereto, through their attorneys of records, that the issues of fact in the above-entitled cause may be tried and determined by the Court without the intervention of a jury, the parties hereto hereby waiving a jury.

Dated this 19th day of May, 1922.

FRANK L. MOORE,

_____,

Attorneys for Plaintiff.

WM. E. LEE,

E. EUGENE DAVIS,

Attorneys for Defendant.

U. S. District Court, District of Idaho. Filed May 19, 1922. W. D. McReynolds, Clerk. [13]

In the District Court of the United States for the District of Idaho, Central Division.

No. 784.

LEO BROTHERS COMPANY, a Corporation,
Plaintiff,

vs.

NORWICH UNION FIRE INSURANCE SOCIETY, LTD., of Norwich and London, England, a Corporation,
Defendant.

No. 785.

LEO BROTHERS COMPANY, a Corporation,
Plaintiff,

vs.

THE NEW BRUNSWICK FIRE INSURANCE COMPANY, a Corporation,
Defendant.

Bill of Exceptions.

BE IT REMEMBERED, that the above-entitled cause came on for trial before the Honorable Frank S. Dietrich, Judge of the above-entitled court, sitting without a jury, a stipulation in writing signed by counsel for both parties having been filed in said cause prior to the trial, at 9:45 A. M. May 19, 1922, plaintiff appearing by its counsel Frank Moore and defendants appearing by their counsel E. Eugene Davis and Wm. E. Lee, whereupon the following proceedings were had and no others, to wit: [14]

The COURT.—These cases that you are bringing on for trial today are law actions as I understand it.

Mr. DAVIS.—Yes, your Honor.

The COURT.—Have you filed a written stipulation waiving jury trial?

Mr. DAVIS.—We have just filed it, your Honor.

The COURT.—Very well.

Mr. MOORE.—Now, Mr. Lee, or Mr. Davis, have we prepared all of our preliminary matters, to get the case started now for trial?

Mr. DAVIS.—I would like, your Honor, to propose amendment to my answer. I will state the reason to the Court. I was under the impression that the amount in controversy was agreed upon and that there would be no necessity for offering evidence or proof as to that but inasmuch as it is not, I will have to amend my answer slightly, so as to bring that point within the issue as it will be raised, if I may, your Honor. May I make this in one affirmative defense, your Honor, to quote these? They are identical. Or shall I submit it in two separate affirmative defenses? Maybe I might do this: File an affirmative answer later, and just state the substance.

The COURT.—I think you would better do that. State your position now, so that counsel will know what it is.

Mr. DAVIS.—My position is simply this, your Honor: The policies provide for a *pro ratio* of all insurance. In view of the fact that I thought we could stipulate that if plaintiff was entitled to recover at all he was entitled to recover such and such a sum from each company, I didn't plead that *pro ratio;* but my pleading will be to this effect,—that if these two policies, the Norwich Union and the New [15] Brunswick, are held to cover on this property that was destroyed, that there then will have been a total of $31,000 insurance covering this property, and that the Norwich Union, with $5000 insurance, would be liable for only five-thirty-firsts of any loss, and that the New Brunswick, with

$6000, would be liable for six-thirty-firsts of all loss. That will not be denied, Mr. Moore.

Mr. MOORE.—Well, I don't remember now just exactly the figures. I thought the loss was higher than that. It would certainly be more than five-thirty-firsts of $5000.

Mr. DAVIS.—No. Five thirty-firsts of the loss. If the loss was around $19,000, we would be liable for five thirty-firsts of the $19,000, for the Norwich Union, and six thirty-firsts of the loss,—or whatever the loss is proved to be.

Mr. MOORE.—The portion was higher than that.

Mr. DAVIS.—Not the loss—the insurance. That would be correct, would it, Mr. Veatch, if these policies are held to cover all?

(Mr. Veatch indicated affirmatively by a nod of his head.)

Mr. DAVIS.—Now, can we get together on these figures here?

Mr. MOORE.—Well, I don't know. We haven't been able to yet.

Mr. DAVIS.—I don't know whether you understand our position or we understand yours. It is going to be quite a task to put in all of this account, your Honor. It will be at least a half day's job, your Honor, unless we can agree. It has been agreed on on all the other policies, I understand. Would your Honor mind taking a few minutes time to let us talk it over?

The COURT.—No. [16]

(A short recess was thereupon taken.)

Mr. MOORE.—If your Honor please, it is stipulated and agreed that these two causes, Leo Brothers Company, a corporation, plaintiff, vs. The Norwich Union Fire Insurance Society, Limited, of Norwich and London, England, a corporation, defendant, No. 784, and the case of Leo Brothers Company, a corporation, plaintiff, vs. The New Brunswick Fire Insurance Company, a corporation, defendant, may be consolidated for the purpose of trial and all future proceedings in this court, and any proceedings in the upper court that either party may take. Is that satisfactory?

Mr. DAVIS.—If we can so stipulate here.

The COURT.—Very well.

Mr. MOORE.—It is further agreed between the plaintiff and defendants, through their respective counsel, that the allegations contained in paragraphs one of each complaint will be taken as confessed, and no proof thereon need be made.

Also that the allegations in paragraph two of each complaint will be taken as confessed and no proof thereof is to be made.

And the remainder of the allegations in the several complaints are to be proven.

Now, very briefly stated, the plaintiff is engaged in the business of manufacturing vinegar, in Moscow, Latah County, Idaho, and has a plant, which it insured, together with the product of its factory. In the case against the Norwich Union Fire Insurance Society, we have alleged that on the 21st day of December, 1920, the defendant insurance company issued its policy of insurance or indemnity

against loss by fire, No. 1064, whereby it did indemnify the plaintiff in the [17] sum of $5000, on the following described property, all situate at No. 244 on the east side of Main Street between A and C Streets, in Moscow, Idaho: On merchandise of every description, consisting principally of vinegar and vinegar stock manufactured or in process of manufacture, and on materials for manufacturing the same, including packages, labels, cases, boxes, and all wrapping and packing material, being the property of the insured, or sold, but not removed; and (provided the insured shall be liable by law for loss or damage thereto or shall have specifically assumed liability therefor), this insurance shall also cover merchandise held in trust or on commission or left for storage or repairs; all only while contained in the three-story comp. roof, brick and frame building and its additions (if any) of like construction communicating and in contact therewith, situate as above. On the 6th day of July, 1921, a fire occurred, damaging a quantity of merchandise, vinegar, that was contained in this building. The loss was approximately $31,000. The insurance amounted to approximately $31,000, and we are suing this company for the face of its policy and interest. We have alleged that we complied with the terms of the policy by immediately notifying the company of the loss and by making the proofs required under the provisions and terms of the policy. That sixty days elapsed after the making of proof, and the

defendant denied liability or refused to pay, and we are suing for that amount.

Now the other cause of action, against the other company, is practically the same, except as to the dates of the insurance and the amount, which I think is $6000. I think that is all I care to state so far as the facts are concerned, at this time. [18]

Mr. DAVIS.—Would your Honor like to have me state our position at this time? The substance of Mr. Moore's statement is correct. We expect, however, to prove that the building that was destroyed was insured as a separate risk, and was in fact and in contemplation of the parties at the time of the contract, a separate building, and was insured under separate policies, and was not the building insured under the policies covered by these two companies. That is the substance of our defense and we will offer proof to that effect.

The COURT.—You mean that the loss does not fall within the terms of the policy?

Mr. DAVIS.—Does not fall within the terms of the policy. There are two buildings up there; there is the vinegar factory, which is on the southeast corner of Main and C. Fifteen feet south of that is another building, a wooden structure, in which the tanks and vinegar were stored. We will show that, through the course of writing this insurance, that these risks were separately insured and treated throughout as separate risks. The wooden building to the south of the factory was the building that burned. Upon that building was $20,000 specific insurance, in two other com-

panies, other than this company. That the risk was described specifically in those policies and those companies paid. That 244, which is the building described in this policy, was not touched by fire, except a very minor damage, which I do not think they are claiming for.

Mr. MOORE.—I will say further that we are suing to recover insurance or indemnity for loss of merchandise, and not the building, in these two actions, merchandise and cider vinegar, we are suing for. Mr. Veatch, will you take the stand.

The COURT.—Well just the merchandise—you are not suing [19] for damage to the building at all?

Mr. MOORE.—No.

Mr. DAVIS.—Just the vinegar and contents of the building.

The COURT.—Very well.

Testimony of Fred Veatch, for Plaintiff.

FRED VEATCH, produced as a witness on behalf of plaintiff, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. MOORE.)

Q. State your full name, Mr. Veatch.

A. Fred Veatch.

Q. And where do you reside?

A. Moscow, Idaho.

Q. And how long have you been a resident of Moscow, Idaho? A. Since September, 1889.

(Testimony of Fred Veatch.)

Q. Have you an acquaintanceship with a copartnership known as Veatch Realty Company?

A. I have.

Q. Who composes that partnership, if you know?

A. Fred Veatch and M. J. Veatch.

Q. Fred Veatch is yourself? A. Yes, sir.

Q. What is the Veatch Realty Company engaged in, what business, at this time?

A. The writing of insurance and bonds.

Q. And how long has the company been engaged in that class of business?

A. The Veatch Realty Company I think is about fourteen years old; it was formed about fourteen years ago; but the [20] firm of Spotswood & Veatch has been in business here since 1889.

Q. Just the Veatch Realty Company?

A. I think about fourteen years ago.

Q. Is the Veatch Realty Company the successor of Spotswood & Veatch?

A. Yes, sir, it is.

Q. Has the partnership of Veatch Realty Company had any business relations with the Norwich Union of London, England? A. Yes, sir.

Q. What was that relationship?

A. I have been their agent for the writing of fire insurance for Moscow and vicinity for at least fourteen years,—the Veatch Realty Company,—and much longer than that as Spotswood & Veatch.

Q. Has the copartnership of Veatch Realty Company had any business relationship with the New

(Testimony of Fred Veatch.)

Brunswick Fire Insurance Company, a corporation? A. Yes, sir. We are their agents.

Q. What was the nature of that business?

A. We are their agents for the writing of fire insurance for Moscow and vicinity, and I think for about six years we were their agents.

Q. Have you any knowledge of a corporation known as the Leo Brothers Company?

A. I have.

Q. Where has it been doing business?

A. In Moscow.

Q. What is the business of Leo Brothers Company?

A. The manufacture of apple cider vinegar. [21]

Q. Where? A. At Moscow.

Q. Does it own and operate a plant for that purpose? A. Yes, sir.

Q. And where is the plant situated?

A. It is situated on the east side of Main Street, between A and C, or on the southeast corner of C and Main Streets.

Q. How long, if you know, has the Leo Brothers Company, a corporation, owned the premises and the plant where it is now conducting its business?

A. Since 1913, I think, some time in that year.

Q. Was it the owner of the premises then on the 21st day of December 1920? A. Yes, sir.

Q. Has it been the owner of the premises at all times since that date? A. Yes, sir.

Q. Now, upon the 21st day of December, 1920, tell us whether or not Veatch Realty Company

(Testimony of Fred Veatch.)

issued any policy of insurance in the name of the Norwich Union Fire Insurance Society, Limited, of Norwich and London, upon any of the property of the plaintiff, Leo Brothers Company?

A. They did.

Q. Have you that policy with you? A. Yes, sir.

Q. Will you produce it?

(Witness produced paper.)

Mr. MOORE.—We ask that the instrument offered be marked Plaintiff's Exhibit "A" for identification. [22]

The CLERK.—I will number it, unless you object.

Mr. MOORE.—All right. One, is it?

The CLERK.—Yes.

Said paper (Norwich Union fire insurance policy) was marked Plaintiff's Ex. 1.

Mr. MOORE.—Plaintiff's Exhibit No. 1, for identification. We now offer the same in evidence.

Mr. DAVIS.—I have no objection, except that it is immaterial.

The COURT.—Very well. It may go in.

Mr. MOORE.—Will you waive the reading of it at this time?

Mr. DAVIS.—Yes.

Mr. MOORE.—Q. Now, Mr. Veatch, tell us whether or not, on or about the 28th day of July, 1920, the copartnership of Veatch Realty Company wrote any insurance, any policy of insurance, upon any property of Leo Brothers Company, a corpora-

(Testimony of Fred Veatch.)

tion, for the defendant, The New Brunswick Fire Insurance Company, a corporation?

A. We did.

Q. Have you that policy in your possession?

A. Yes, sir. I brought the wrong policy over. I will have the other one here in just a second.

Mr. MOORE.—The witness advises me that he brought the wrong policy.

Mr. DAVIS.—I would like to have him bring the policy, so that we can compare it. I won't require them to formally offer it.

Mr. MOORE.—If the Court please, I desire to amend the complaint in the case of Leo Brothers Company, a corporation, plaintiff, vs. Norwich Union Fire Insurance Society, Limited, of Norwich and London, England, a corporation, in paragraph 7, in line three thereof, by erasing the figures 225 and inserting in [23] lieu thereof the figures 125.

Mr. DAVIS.—If that is correct I have no objection.

Mr. MOORE. — Q. Now, I can't recall, Mr. Veatch—

Do you know, Mr. Davis, whether that amount appears in the complaint further?

Mr. DAVIS.—I don't believe so.

Mr. MOORE.—Let the amendment go to all corrections of that amount.

Mr. LEE.—The answer could also be amended in the same respect too?

(Testimony of Fred Veatch.)

Mr. MOORE.—Yes.

The COURT.—Is this amount admitted in the answer?

Mr. LEE.—Well, we just specifically deny that it amounts to 225, is all.

Mr. DAVIS.—We admit that he paid the premium for this particular policy, your Honor, so he won't have to prove that.

Mr. MOORE.—Do you want me to introduce proof on that?

Mr. DAVIS.—No. This Norwich Union policy was paid for, but it doesn't cover this particular building that was burned.

Mr. MOORE.—Will you then turn to paragraph 7 of the complaint?

Mr. DAVIS.—That may be admitted as it stands, Mr. Moore.

Mr. MOORE.—It is stipulated, then, that the allegations of paragraph 7 in each complaint are confessed as alleged and no proof thereof is necessary.

Q. Now, Mr. Veatch, do you know whether or not a fire occurred in or upon the property of the Leo Brothers corporation, the plaintiff?

A. It did, yes, sir.

Q. At what time, if you remember? [24]

A. On the evening of July 6, 1921.

Q. Was that the property covered by these two insurance policies? A. Yes, sir.

Mr. DAVIS.—I object to that, your Honor. That calls for a conclusion.

(Testimony of Fred Veatch.)

The COURT.—Sustained.

Mr. MOORE.—Q. Where was the property in which the fire occurred situated?

A. On the southeast corner of Main and C Streets.

Q. That is the southeast corner of the intersection of Main and C. Streets?

A. Main and C Streets, yes, sir.

Q. And on the east side of Main Street between what streets? A. Between A and C.

Q. Did the Leo Brothers sustain any loss by that fire? A. Yes, sir, they did.

Q. What, if anything, did Leo Brothers do with reference to notifying the defendants in this action of that loss?

Mr. DAVIS.—We will admit that the defendants were duly notified, your Honor.

The COURT.—In both cases?

Mr. DAVIS.—In both cases.

The COURT.—Very well.

Mr. MOORE.—Q. Mr. Veatch, can you tell us what that loss amounted to? A. On the entire—

Q. No,—on this property that is covered by the insurance. We didn't read the description of the property insured, but it is merchandise, principally cider vinegar. It may be assumed that nothing but the vinegar was affected by this insurance. [25]

Mr. DAVIS.—With the further objection that nothing destroyed at all was affected.

Mr. MOORE.—Well, with that reservation.

The COURT.—I notice in these policies, a part of the description is the number, 244.

(Testimony of Fred Veatch.)

Mr. MOORE.—Yes.

The COURT.—Are you going to elucidate—what is 244?

Mr. MOORE.—A number, I understand, fixed by —I don't know what his official position is, or what connection he has with the company, but it is the man who, I guess, prepared, alters, and changes as needed the Sanborn Fire Map of Moscow.

The COURT.—Oh, it is a reference to his fire map?

Mr. LEE.—Yes.

Mr. MOORE.—Q. Do you know what the number of Leo Brothers Company's plant is—do you know what street it is numbered on?

A. On Main. It is numbered on both Main and A Streets, as far as the Sanborn map is concerned.

Q. Main and A Streets?

A. Main and C Streets, yes.

Q. But what is the city number?

A. I don't know that it has a city number, Mr. Moore. I only know the Sanborn map number on that, is our only reference, and that is number 244.

Mr. MOORE.—We have received the policy of the New Brunswick Fire Insurance Company, and we ask that it be marked for identification as Plaintiff's Exhibit No. 2.

Said insurance policy was marked Plaintiff's Exhibit No. 2.

Mr. MOORE.—We now offer it in evidence.

Mr. DAVIS.—I have no objection, Mr. Moore, if it compares up with the—we have never seen it, is all. We would like [26] to look it over a

(Testimony of Fred Veatch.)

second. There is just a slight discrepancy here, Mr. Moore, in these daily reports, but I will make no objection at the present time other than that it is immaterial, and ask Mr. Veatch to explain these discrepancies.

Mr. MOORE.—You waive the reading at this time?

Mr. DAVIS.—Yes.

Mr. MOORE.—Q. Do you write your insurance descriptions in the city of Moscow by a map known as the Sanborn Fire Map of the city of Moscow?

A. Entirely so, yes, sir.

Q. Were the descriptions in the two policies of these two defendants in evidence so written?

A. They were.

Q. Have you in your possession a Sanborn Fire Map of the city of Moscow, showing the location and the description of the property of Leo Brothers? A. I have, yes, sir.

Q. Is this Sanborn's Fire Insurance Map of the city of Moscow that you refer to?

A. Yes, sir.

Q. Were these two policies written according to the descriptions in this map?

Mr. DAVIS.—I object to that, your Honor. He can say with reference to these descriptions, if that is what he means, but according—

Mr. MOORE.—We will admit the technicality and say "with reference."

The COURT.—You may answer the question. Were they written with reference to these maps?

(Testimony of Fred Veatch.)

A. They were, both of them. [27]

Said map was thereupon marked Plaintiff's Exhibit No. 3.

Q. Will you turn to the page of Plaintiff's Exhibit No. 3 where the description of the Leo Brothers' property which you say these insurance policies covered is described.

A. It is right here.

Q. What page is it?

A. Page 4. It is located on this map as Page 4, Block 102, No. 244.

Mr. MOORE.—We now ask that page 4 of this map be marked for identification.

Mr. DAVIS.—I have no objection.

Said page 4 of said map was marked as Plaintiff's Exhibit No. 3–A.

Mr. MOORE.—We offer it in evidence.

Mr. DAVIS.—What map is that?

WITNESS.—That is the 1918.

Mr. MOORE.—Do you want the witness to point out on this map where that property is situated?

The COURT.—Have you introduced it in evidence?

Mr. MOORE.—Yes.

The COURT.—Very well.

Mr. MOORE.—Now, will you point out, for the benefit of the Court, where Leo Brothers' property is situated. Where is Main Street, first?

A. Here is Main Street, shown on this map. This is going north from the business part of town.

Q. Where is A Street?

(Testimony of Fred Veatch.)

A. A Street is on the south side.

Mr. DAVIS.—North.

WITNESS.—This is north right here. This is east. This is north. Now that— [28]

Mr. MOORE.—Q. Where is "A" Street?

A. "A" Street is right here on the south.

Q. Where is "C" Street?

A. "C" Street is right here on the north.

Q. Now, point out the property owned by the Leo Brothers Company.

A. This property indicated inside of this line, except we are built right up to the line there and back to the alley. Our buildings practically cover all of our holdings in there.

Q. This exhibit was used in the trial of another cause, was it not? A. Yes, sir.

Q. And those pencil and ink markings were made upon it at that time? A. Yes.

Q. Now, where was the merchandise, the cider vinegar, located, when the loss occurred?

A. In this location right here.

Q. And what is that called upon the—marked upon the map?

A. That is marked "Vinegar sheds."

The COURT.—"Vinegar tanks," you mean?

A. "Vinegar tanks," yes.

Mr. MOORE.—Q. And what was the vinegar contained in? A. Large tanks.

Q. How many of them? A. Twelve, 16x16.

Q. Do you know how many gallons of vinegar were lost at that time?

(Testimony of Fred Veatch.)

A. Approximately 130,000 gallons; it was a hundred and twenty-nine thousand, and, I think, six hundred and fifty, to be exact. [29]

The COURT.—Where is the number 244?

A. Right there, Judge. Here is the number right there.

The COURT.—The fire started on the property numbered two hundred and what?

A. 224. That was the old place used by the highway district at that time.

Mr. MOORE.—Q. It was an old barn, but it didn't belong to Leo Brothers? A. No.

Q. The fire communicated from that barn over to the property of Leo Brothers? A. Yes.

Q. Can you tell us whether or not there was any other concurrent insurance upon this vinegar, this personal property?

A. There was $31,000 on vinegar.

Q. That is in all?

A. That was in all. And then there was—

Q. This policy is for $6,000. I may get mixed up.

A. The New Brunswick is $6,000, and the Norwich Union is $5,000.

Q. Then the concurrent insurance with the Norwich Union policy would be $26,000?

A. Would be $26,000.

Q. And the concurrent insurance with the other policy would be $25,000? A. $25,000.

Q. Now, what was the plaintiff's loss upon this merchandise?

(Testimony of Fred Veatch.)

A. It figured a little better than $31,000,—I think a few hundred dollars over, a small amount over.

Q. That would be less salvage. The actual loss would be [30] thirty-one thousand and some odd dollars, less the salvage? A. Less the salvage.

Q. Will you tell us, Mr. Veatch, how you arrived at the insurance loss or loss under that fire?

A. The number of gallons?

Q. Well, yes, the number of gallons.

A. Well, that was measured up by Mr. Juniper.

Q. Who is Mr. Juniper?

A. An adjuster with Mr. Webster.

Q. They came here for the purpose of adjusting these losses? A. Yes, sir.

Q. How did you determine the extent of the loss, or its value? A. By chemical analysis.

Q. No,—I don't mean that. Was the vinegar worth anything? A. The worth of the vinegar?

Q. Yes, the value.

A. Just please repeat that question.

Q. I want the amount of the loss, in dollars and cents.

A. Well, according to our figures on our books, it was $31,116.

Q. How did you arrive at that?

A. By placing the value of—

Q. In other words, what was that vinegar worth at the time of its loss, per gallon?

A. That vinegar was worth 26 cents a gallon.

(Testimony of Fred Veatch.)

Q. And the total loss then would be the value per gallon, by the number of gallons?

A. Yes, sir. [31]

Q. You arrived at it in that way?

A. Yes, sir.

Q. Now, what did you do, if anything, with reference to giving the defendants notice of the occurrence of this fire?

Q. We wired to the head office—

Mr. DAVIS.—We will admit that notice was given.

Mr. MOORE.—You admit that due notice was given following the fire, as required by the terms of the policies?

Mr. DAVIS.—Yes.

Mr. MOORE.—Q. Did you ever at any time make any proof of loss under these policies?

Mr. DAVIS.—We will admit this—we will make this admission: That we are making no contention that no proofs were furnished. We are making no contention that there has been no violation of the policy contract in any of those respects, or no failure to conform to the conditions.

Mr. MOORE.—I prefer, Mr. Davis, if you would let me introduce the original proofs of loss, if you have them.

The COURT.—I see no reason for that. If they waive proof on that point, admit that you—

Mr. MOORE.—Complied with the provisions of the policy.

The COURT.—Yes. I see no reason for taking up the time of the Court.

Mr. DAVIS.—I would be glad to give it to you, Mr. Moore, but I haven't had time to find it. You just served those notices this morning.

Mr. MOORE.—Q. Now, what loss has Leo Brothers sustained under the $5,000 policy of the Norwich Union Fire Insurance Society, Limited?

Mr. DAVIS.—I object to that, your Honor. I think that [32] calls for a conclusion, a computation.

The COURT.—Sustained.

Mr. MOORE.—Q. Has the defendant Norwich Union *Life* Insurance Society, Limited, of Norwich and London, England, paid to you any part, or paid to Leo Brothers Company any part or portion of the loss, of its liability for loss under this policy?

Mr. DAVIS.—We will admit that it has not been paid.

Mr. MOORE.—And the same admission with reference to the New Brunswick?

Mr. DAVIS.—Except the conclusion as to their liability.

The COURT.—Well, you have paid nothing?

Mr. DAVIS.—We have paid nothing.

The COURT.—On either policy?

Mr. DAVIS.—On either policy.

Mr. MOORE.—Take the witness.

(Testimony of Fred Veatch.)

Cross-examination.

(By Mr. DAVIS.)

Q. Mr. Veatch, you stated that Leo Brothers had owned this building since 1913, I believe?

A. Yes, the property.

Q. And at the time of their ownership the building was slightly different when they first acquired ownership? A. Yes, sir; very materially.

Q. How long have you been interested in Leo Brothers?

A. Since 1911, although the corporation was not formed until 1913.

Q. You were interested at the time they acquired this property? A. Yes, sir. [33]

Q. And I believe you are secretary and treasurer, or secretary and manager of the company?

A. I am secretary and manager, yes.

Mr. DAVIS.—We ask to have this marked as an exhibit.

A certain paper was marked Defendant's Exhibit No. 4.

Q. Handing you Defendant's Exhibit No. 4, and referring to page 4 thereof, about the center of the page, marked in a circle with indelible pencil, is that a fire map of the Leo Brothers plant?

A. When we purchased, that was, yes, sir.

Mr. MOORE.—This is hardly proper procedure and examination.

Mr. DAVIS.—Well, I have—

Mr. MOORE.—Well, all right.

(Testimony of Fred Veatch.)

Mr. DAVIS.—I want to go into these circumstances.

Mr. MOORE.—Then you had better offer it as an exhibit, for the purpose of examination.

Mr. DAVIS.—I will, as soon as he identifies it.

WITNESS.—Yes, that is—

Q. What date is that,—can you tell from looking at this map when it was prepared?

A. I think this map was brought down to date about—it was corrected in 1909.

Mr. DAVIS.—I will offer Defendant's Exhibit No. 4 in evidence.

Mr. MOORE.—For the purpose of his cross-examination?

Mr. DAVIS.—For the purpose of cross-examination.

Q. Now, Mr. Veatch, just briefly, so that the situation may be understood, just explain to the Court briefly what these portions are.

A. When we purchased that— [34]

Mr. MOORE.—We object to that as irrelevant and immaterial, the description of the property from a map back in 1909, something like eleven years before the writing of this policy.

Mr. DAVIS.—It is not for that purpose. It is for the purpose of describing and explaining the portions of the building as they were erected, which we have—

The COURT.—I am not sure that it is material. I will let it go in, however.

Mr. MOORE.—Allow us an exception.

(Testimony of Fred Veatch.)

WITNESS.—Yes, sir; that is a good picture or drawing of the plant when we first purchased it.

Q. What color is that?

A. That is pink. That is brick.

Q. What color is that?

A. Well, I don't know. I guess that is pink. I don't know. I am not—

Q. The pink is the brick portion? A. Yes, sir.

Q. And the yellow was the frame?

A. Yes, sir.

Q. The brick is two-story brick?

A. Two and a half-story brick.

Q. And the frame is—

A. That was just an old shed there, which we tore down.

Q. Mr. Veatch, have you your rating book?

A. No, sir; that was filed—that was—

Q. Just one page of it was used in the former trial.

A. I haven't it, because that was an old book that I have.

Q. You have it in your office?

A. I have a new one, yes. I haven't the old one. [35]

Q. What became of the old book?

A. Well, I don't know. I took that sheet out, and I don't think I paid any attention to it.

Q. You haven't disposed of it?

A. No. I think it is at the office, except that page isn't there.

Q. I will ask you to explain to the Court then,

(Testimony of Fred Veatch.)

Mr. Veatch, how you arrived at the rates for these buildings.

A. From a rate book which is furnished—

Mr. MOORE.—Just a moment. Under the evidence thus far, that is assuming a fact not—

Mr. DAVIS.—Very well. I may be previous in that.

Mr. MOORE.— —disclosed by the—

Mr. DAVIS.—I have other matters.

Q. I notice on one of these policies, Mr. Veatch, that the—on the New Brunswick policy, that the name is Fred Veatch, agent, and on the Norwich Union policy the name is Veatch Realty Company, agent.

A. Yes, sir,—the appointments were made that way.

Q. Fred Veatch was agent for the New Brunswick?

A. Yes, sir, and the Veatch Realty Company for the Norwich Union.

Q. And you handled, in your office, all the insurance business? A. Yes, sir.

Q. Who is the other Veatch that is a member of the firm? A. M. J. Veatch.

Q. That is your brother? A. Mrs. Veatch.

Q. But she is just a nominal member? [36]

A. Yes.

Q. You take care of all of the business?

A. Yes, sir.

Q. Now, Mr. Veatch, in placing this Leo Brothers' insurance, you were the only person in

(Testimony of Fred Veatch.)

connection with Leo Brothers that had anything to do with it, I believe you testified in the former trial, did you? A. Yes, sir.

Q. And so far as this insurance was concerned, Fred Veatch was Leo Brothers? A. Yes, sir.

Q. Now, in writing your insurance, in entering into these contracts of insurance with the insurance company, just what was the procedure? Did you ever have any communication with the company other than such as passed between you in your daily course of business, regarding this particular insurance, your insurance on Leo Brothers' factory? A. I think not, no, sir.

Q. The insurance was written in the routine manner? A. Yes, sir.

Q. Now, explain to the Court how you bind the company, what you do in writing the insurance.

A. We write the policy and mail the daily report to the company on the day it is written.

Q. Explain to the Court what this daily report is, and what it contains. A. Can I use—

Q. Yes,—if you have your daily reports on these two policies—

A. These policies come to us with two of these inside of the policy. [37]

Q. You are referring to the—

A. To the daily reports, yes.

Mr. DAVIS.—May I take those and have them marked?

WITNESS.—They are my office copies.

(Testimony of Fred Veatch.)

Said reports were thereupon marked Defendant's Exhibits Nos. 5 and 6.

Q. I hand you Defendant's Exhibits 5 and 6, one of which says "Agent's record of the New Brunswick Fire Insurance Company," and the other says, "Agent's duplicate copy of daily report, Norwich Union Fire Insurance Society." When you say the policies come to you with two of these, you mean two copies of—

A. Daily reports.

Q. Daily reports?

A. One says "Daily report" and the other says "Agent's record," or "Agent's copy."

Q. And that doesn't include these printed slips?

A. It doesn't include these riders, no, sir. The policy is written with one—just all written at one time. The one action completes the policy and the daily reports, both of them. The daily report is original and the others are copies. The first copy is the one that is sent to the company, and the second copy is the one kept for the agent's records. With the exception of the riders—

Q. That is the pasted on slips?

A. Yes, the printed slips are written three at a time, and the original is pasted on the policy, the next one is pasted on the report that goes to the company, and the third copy is pasted on the agent's copy, which is retained at the office.

Q. A portion of these instruments that are not the printed slips, they are not pasted on the policy?

A. No, sir. [38]

(Testimony of Fred Veatch.)

Q. Just these slips attached? A. Yes, sir.

Q. And then what becomes of these daily reports that you say go to the company? To whom do you mail them,—to the Norwich Union?

A. To the Board of Fire Underwriters, at Salt Lake City.

Q. And then they mail them on to the company?

A. I suppose so. I have no knowledge of that part.

Q. Well, you don't know then whether these policies were communicated to your company or not?

A. I have no personal knowledge of it.

Q. How long have you been in the insurance business, Mr. Veatch? A. About 32 years.

Q. You do know that these policies go on to the company, don't you?

A. Well, they certainly get them, I know that.

Q. You don't bind your company without advising them? A. No, sir, I never do, I think.

Q. You advise your company when you attempt to bind them?

A. Yes, sir. I think there is no question but what the Board at Salt Lake City sends them on to San Francisco.

Q. Haven't you become sufficiently familiar in your thirty years' experience to know that that is done? A. I am sure of it, yes, sir.

Q. You mail these to the Board so that they check up on the rates? A. Yes, sir.

Q. And then they mail them on to the company?

(Testimony of Fred Veatch.)

A. Yes, sir. [39]

Q. And that is the way the company learns of the risks? A. Yes, sir.

Q. In referring to the risks you referred to the Sanborn map that was in your office?

A. Yes, sir.

Q. And described the policies, described the risk that you undertook to insure, by reference to these Sanborn maps? A. Yes, sir.

Q. And in computing your rate, the company has a surveyor come around, the Board of Fire Underwriters has a surveyor come around, and he surveys the buildings for fire hazards, does he not?

A. Yes, sir.

Q. And then they publish a specific rate for each building in the business section of Moscow?

A. Yes, sir.

Q. That is the sheet you were referring to a while ago, which was offered in evidence in the other trial? A. Yes, sir.

Mr. DAVIS.—I offer these daily reports, your Honor, being 5 and 6, of the defendants.

Mr. MOORE.—May I see them just a moment? These are Mr. Veatch's?

WITNESS.—Yes, sir.

Mr. MOORE.—Not yours?

Mr. DAVIS.—Those are identical copies with what you sent the company? A. Yes, sir.

Q. And who is the general agent for the New Brunswick to whom you report? [40]

A. At that time I think Mr. Alverson; I think he

(Testimony of Fred Veatch.)

was alive at that time. Now it is Mr. Junker, I think, is the manager of that.

Q. Mr. Alverson was agent? It was the same office anyway?

A. Yes, sir, the same office.

Q. And he is general agent also for the U. S. Fire, also? A. Sure, U. S. Fire only.

Q. You report U. S. Fire to him also?

A. Yes, sir.

Mr. MOORE.—Have you the copy of this sent to the company?

Mr. DAVIS.—Well, I may or may not have. Mr. Veatch says this is a copy. Maybe Mr. Veatch can tell. Are these two instruments—

Q. Just handing you two papers. Tell me if those are the ones you sent to the company, or if those are copies.

A. No, sir, these are not copies. These were made out at the time of the fire, for the benefit of Mr. Webster.

Q. Both of these? A. Both of those?

Mr. DAVIS.—Well, I may have the originals, but I doubt it. Any objection?

Mr. MOORE.—No objection.

Mr. DAVIS.—I will ask to have this marked.

A certain paper was marked Defendant's Exhibit No. 7.

Q. I will hand you Defendant's Exhibit No. 7, and ask you to refer to that and state whether or not that is the specific rate of Moscow referred to.

A. Yes, sir, taken from their rate book, yes, sir.

(Testimony of Fred Veatch.)

Q. When you wrote your policies then, at the time those policies were written covering this property, you referred to [41] this book for classifying and fixing your rate and the risk, did you not? A. Yes, sir.

Q. And so reported to the company?

A. Yes, sir.

Q. At the top of this page it says, "Main Street, east side, Moscow, Idaho, p. 3." This "P 3" means page 3? A. Yes, sir.

Q. Specific rates of Moscow? A. Yes, sir.

Q. And number of rating,—that refers to the number of the building? A. Yes, sir.

Q. Location, class, occupation, building contents, rating takes effect. Now, the number one says, "C" and "A" Streets, block 1 and 2. That merely starts the block off? A. Yes, sir.

Q. Number two says, southeast corner "C" 244, C D vinegar factory, 250—or vinegar factory, 250, 250. The first 250 refers to the rate on the building? A. Yes, sir.

Q. And the second refers to the rate on the contents? A. Yes, sir.

Q. Line 3 of this rate book says, south—what does that mean? Does that refer to the risk south of the southeast corner?

A. It means next south.

Q. D vinegar tanks, building 245, contents 245. That refers to the vinegar tanks risk?

A. Yes, sir. [42]

Q. And the contents? A. Yes, sir.

(Testimony of Fred Veatch.)

Q. And two forty-five means the rating? That is two forty-five a hundred? A. Yes, sir.

Mr. DAVIS.—I would like to offer Defendant's Exhibit No. 7.

Mr. MOORE.—No objection.

Mr. DAVIS.—Q. Now, Mr. Veatch, referring to the value of this property, you said you had 129,650 gallons in the tanks in that frame building?

A. Yes, sir.

Q. Now, how have you arrived at that?

A. They were measured. Mr. Juniper made his own measurements on that.

The COURT.—How much was that?

Mr. DAVIS.—129,650 gallons.

A. I measured it up immediately after the fire. When Mr. Juniper came down to make the adjustment he went down to measure it alone, and there was only about 350 or 360 gallons difference between us, so I just let him use his figures.

Q. Did you have any book records of the amount of vinegar you had on hand? A. Yes, sir.

Q. How does this compare with your book records? A. I think closely.

Q. Do your book records show how much vinegar was in this building and how much in the other?

A. No, sir.

Q. You didn't keep them segregated?

A. No, sir; that is impossible. [43]

Q. You said you had $31,116 loss?

A. On stock. I think that is what our figures show.

(Testimony of Fred Veatch.)

Q. Just tell me how you arrived at that? Did you arrive at that by multiplying 129,650 by 26?

A. By 24.

Q. How did you arrive at the 24 figure?

A. Well, the principal reason we did that, we figured that—I was under the mistaken impression that we could only put in the manufacturing cost.

Mr. MOORE.—Cost of what?

A. The cost of the stock, of the vinegar. But I was advised later that the replacement value was what we should have figured.

Q. You put this in at 26 cents per gallon?

A. I put it in our proof of loss that we made up at 24 cents a gallon, and that amounted to, I think, $31,116.

Q. Where did you get your figures of 24 as replacement cost?

A. That wasn't—that wasn't our replacement cost. That was cost of manufacturing, from our books.

Q. What did that include?

A. Our manufacturing cost?

Q. Yes.

A. That includes all of our expenses, everything.

Q. It includes your overhead?

A. It includes overhead, taxes, insurance, interest, wages, salaries.

Q. For the entire plant?

A. For the entire plant. There is only one product there that can take care of the cost, and

(Testimony of Fred Veatch.)

that is vinegar. There is [44] only one turnover a year with that product.

Q. And did you base that on a year's operation?

A. No, sir. We closed our books as of the night of the fire, and made our figures from that. The end of our fiscal year is September 30th, and we always close our books at that time, and make our inventories; but at this time we closed our books as of the night of the fire, and brought down the balance as of that date.

Q. And it cost you 24 cents a gallon?

A. Twenty-four cents a gallon was our figures on that.

Q. And that is what it would have cost you to replace that, 24 cents a gallon?

A. Well, at that time, of course, we had no facilities to replace it.

Q. What grade vinegar was this, Mr. Veatch, if that is a proper way of describing it?

A. It was six and a half per cent acidity.

Q. Now, just tell the Court, and me also, what standard six and a half per cent acidity is.

A. Six and a half per cent is a very high standard for vinegar. The Government pure food law requires four per cent acidity. Practically all the states, with the exception of a few, have that same standard. There is one or two that require four and a half per cent acidity.

Q. That is based on—

A. Your market is based on your four per cent acidity.

(Testimony of Fred Veatch.)

Q. Where is your market,—here in this part of the country?

A. Well, sir, we have shipped as far east as Buffalo, New York, and all through the middle west. Ordinarily our market [45] is in the northwest, in the three states of Oregon, Washington, Idaho, and Montana.

Q. To arrive at 26 cents a gallon replacement cost, you say, from where did you obtain your prices?

A. From practically every factory doing business in the northwest.

Q. What was that based on? Did you ask for submission of prices for replacing this vinegar?

A. Yes, sir.

Q. Or did you consult just the market prices?

A. No. We asked for prices.

Q. Was that 26 cents a gallon—what was that based on, what kind of vinegar?

A. That was based on the prices of four per cent acidity vinegar.

Q. Then you mean you get your prices of four per cent acidity vinegar and figure up and down?

A. Yes. I will explain. There is a spread—that is, the market conditions over the United States—there is a spread of two cents a gallon for every half of a per cent of acidity.

Q. Two cents a gallon? A. Yes, sir.

Q. So then the market price of four per cent acidity was less than 24?

(Testimony of Fred Veatch.)

A. Yes, sir; I think at that time we were marketing our vinegar at about between 16 and 17 cents for the naked juice, not including the cooperage. That costs from six to seven cents a gallon, your barrels.

Q. You say that was not included? How much did you say that was? [46]

A. I said we was getting net 16 and 17 cents a gallon for four per cent acidity vinegar.

Q. You were getting net that much here at Moscow? A. Yes, sir.

Q. At the time of the loss? A. Yes, sir.

Q. And you add two cents for a degree of acidity?

A. Two cents a gallon for each half a per cent of acidity.

Q. So four per cent, between four and six and a half per cent, that is what you said your vinegar was? A. Yes, sir.

Q. That two and a half degrees—

A. That makes a spread of ten cents.

Q. And that is the way you arrived at your 26 cents? A. Yes, sir.

Q. When had the vinegar been tested for this acidity?

A. We test our generators every day when we are making the run.

Q. Now this vinegar wasn't totally destroyed, was it? A. No, sir.

Q. It had deteriorated by reason of the fire?

A. Yes, sir.

Q. That is correct? A. Yes, sir.

(Testimony of Fred Veatch.)

Q. And the vinegar was sold to some vinegar people, or salvage people—to whom was it sold?

A. It was sold individually to Mr. F. C. Divans and Mr. Porter,—I can't think of his initials.

Q. They are vinegar dealers?

A. They are vinegar and pickle men in Seattle. [47]

Q. For what was it sold? A. For what price?

Q. Yes.

A. Six cents a gallon. Mr. Webster made that sale.

Q. He made it for your benefit? A. Yes, sir.

Q. You received the money?

A. Yes, sir. I received five and a half cents a gallon on that. The brokerage firm that he sold to charged a half a cent a gallon brokerage. That was deducted. We received five and a half cents salvage on a hundred—we didn't receive that on 129,650 gallons; we received that on 115,800 gallons, I think.

Q. And what did that total, do you recall?

A. Can I refer to my books?

Q. Yes.

A. We received net on that $6,369.

Q. Now, Mr. Veatch, what other companies do you claim had insurance on this vinegar that was damaged?

Mr. MOORE.—Just a moment. Have you a list, Mr. Veatch, so that you can be accurate in that?

A. Can I refer to my books a minute again?

Mr. DAVID.—Yes,—better get them up here.

(Testimony of Fred Veatch.)

A. You want me to give the amounts, or just the companies?

Q. The companies and amounts.

A. The Home of New York had $10,000. The Liverpool, London & Globe had $10,000. The New Brunswick Fire Insurance Company had $6,000; and the Norwich Union Fire Insurance Society had $5,000.

Q. Have you the daily reports of the Liverpool, London & [48] Globe and the Home with you?

A. I think they were filed in the other court, Mr. Davis.

Mr. MOORE.—I have no objection to that, Mr. Davis, but—

Mr. DAVIS.—I want to offer that other later anyway, and I will just keep them together.

A certain paper was marked Defendant's Exhibit No. 8.

Q. Now, handing you Defendant's Exhibit No. 8, for identification, look at these four instruments that comprise this number eight, and state to me what they are.

A. The first one is the policy of the Home of New York.

Q. Daily report?

A. Daily report, yes, copy of daily report, or agent's record, covering $5,000 on stock of vinegar. The next is the United States Fire Insurance Company policy covering $250 on building and $1000 on tanks. The next one is the Liverpool, London & Globe Insurance Company policy covering $10,-

(Testimony of Fred Veatch.)

000 on stock. And the last one is the Home Insurance Company policy covering $5,000 on stock.

Q. You mean when you say policies—

A. Agent's records of the policies.

Q. Eliminating the United States Fire for the present,—these are the policies you refer to when you say you had concurrent insurance in addition to the insurance carried by the two defendants here?

A. Including the two other daily reports.

Mr. DAVIS.—May I have you mark these also as A, B, and C, etc.?

Certain papers were marked as Defendant's Exhibits 8A, 8B and 8C.

Q. Mr. Veatch, I will call your attention—Defendant's [49] Exhibit 8, without further identifying the mark, is the policy of the Home Insurance Company for $5,000, covering the vinegar?

A. Yes, sir.

Q. Defendant's Exhibit 8A is the $10,000 policy of the Liverpool, London & Globe?

A. Yes, sir.

Q. And Defendant's Exhibit 8B is the $250 and $1000 policy of the United States Fire?

A. Yes, sir.

Q. Which has no reference to the stock?

A. No, sir.

Q. And Defendant's Exhibit 8C is the other $5000 policy, copy of the other $5000 policy of the Home? A. Yes, sir.

Q. Which you state covers also on stock?

(Testimony of Fred Veatch.)

A. Yes, sir.

Q. Stock you are referring to here?

A. Yes, sir.

Mr. MOORE.—Have you offered that in evidence?

Mr. DAVIS.—I will offer that in evidence.

Mr. MOORE.—Do you object to stating your purpose?

Mr. DAVIS.—I am offering it for two different purposes,—one purpose, of showing the construction Mr. Veatch placed on the policy, and the other purpose, showing his other insurance.

Mr. MOORE.—It is admitted that there was other concurrent insurance, and I think it is incompetent to place any interpretation upon this particular policy, and it is irrelevant and immaterial. Here are two policies written by the defendants, and he wants a construction of those policies by daily reports made to other companies carrying concurrent insurance. [50]

Mr. DAVIS.—I wish to put the Court in the situation of the parties at the time the contract was entered into.

The COURT.—I think I shall receive them and consider them.

Mr. MOORE.—Allow us an exception?

The COURT.—Yes.

Mr. DAVIS.—Q. Now, Mr. Veatch, to get at this loss, the amount of your loss, Mr. Juniper,—Webster and Juniper are independent adjusters, are they not? A. I understand so.

(Testimony of Fred Veatch.)

Q. And they are at various times employed by the various insurance companies to meet with the assured and determine the amount of loss with the assured? A. Yes, sir.

Q. Mr. Juniper was the first member of the firm of—do you know whether or not they were employed by the different insurance companies that were interested in this loss, this Leo Brothers loss, at the time it occurred?

A. I have no personal knowledge, with the exception of two companies.

Q. You received communication from the—

A. From two companies, the Automobile Fire Insurance Company and the Home Insurance Company, to have Messrs. Webster & Juniper adjust their losses.

Q. But did you not receive communications from the Norwich Union and others of the companies after Mr. Webster and Juniper had been on the ground, in which they advised that Webster & Juniper were representing them?

A. No, sir.

Q. Then you don't know that Webster & Juniper represented [51] any of these companies then?

A. Not of my own personal knowledge, with the exception of those two.

Q. You undertook, on behalf of yourself and Leo Brothers with Mr. Webster and Mr. Juniper assuming to act for these different companies to arrive at the amount of your loss and damage, did you not? A. Yes, sir.

(Testimony of Fred Veatch.)

Q. And you had extended negotiations with them, and Mr. Juniper helped you measure your vinegar, and test your vinegar, and they found a purchaser for your salvage, and helped you negotiate the deal with the salvage purchasers, did they not?

A. Yes, sir.

Q. And eventually when the amount of loss and damage had been determined between you and Mr. Webster, Mr. Webster assisted you in preparing proofs of loss to be submitted to the companies?

A. No, sir.

Q. He did not?

A. No, sir. I will say that on those losses that we did agree on, Mr. Webster prepared and sent down what he marked "compromise" proofs of loss.

Q. As a matter of fact, you and Mr. Webster had agreed upon the amount of loss and damage?

A. On a great deal of the stuff, yes.

Q. And on this stock also?

A. No, not on stock; we never agreed on that.

Q. Was there ever any controversy between yourself and the Home and the Liverpool, London & Globe, as to whether or not there was any liability at all?

A. Not with me, not direct with them. I don't know. [52]

Q. Was there ever any controversy with you and Mr. Webster, representing them, as to whether or not they covered and were liable for the loss?

A. They certainly were a long time admitting liability.

(Testimony of Fred Veatch.)

Q. Was there ever any time during your negotiations with Mr. Webster, any hint or suggestion from him, that the Liverpool, London & Globe and the Home were not liable for the loss?

A. No attempt of Mr. Webster.

Q. At all times, so far as he was empowered and able, he admitted liability?

A. I don't think he admitted liability. I never knew Mr. Webster to admit liability on anything, but I think he said they were not denying liability.

Q. Then you and Mr. Webster undertook to arrive at the amount of loss and damage for these policies at least?

Mr. MOORE.—We object to that if it is simply for the purpose of showing that they settled and compromised.

Mr. DAVIS.—I am showing that they didn't compromise.

The COURT.—Overruled.

A. I want to say in this connection that Mr. Webster did not help us prepare any proof of loss. We had to prepare our own proof of loss, and served on the Home of New York and the Liverpool & London & Globe, the same as the others.

Q. That was at the beginning?

A. To save our rights, before the sixty days expired.

Q. But Mr. Webster prepared the proofs upon which you finally received your payment from the Home and the Liverpool & London & Globe?

A. Yes, sir.

(Testimony of Fred Veatch.)

Q. In preparing those and in preparing your agreement [53] with these two companies, you and Mr. Webster arrived at a loss of nineteen thousand five hundred and some odd dollars, did you not?

A. No, sir, I don't think so.

Q. Do you recall upon what basis the Home and the Liverpool & London & Globe paid?

A. We compromised on a basis of twenty cents a gallon, of those companies that wanted to settle.

Q. What was your total net loss under your agreement?

A. Can I refer to my book just a second?

Q. Yes, I want you to.

A. Those cases we settled, we settled on the basis of a loss of $25,930.

Q. Was that your net loss?

A. That was the gross loss.

Q. You weren't paid the gross loss?

A. Porter and Divans turned in their check for the amount of the salvage, turned right in to us.

Q. And then you deducted that from your loss?

A. Yes. Then Mr. Webster used as his figures on that $19,561.

Q. Which was your net loss, on that basis?

A. Yes, sir.

Q. That salvage check came direct to you.

A. Yes, sir.

Q. The insurance companies didn't participate in that?

A. No, sir; that came right direct; Mr. Webster was here and—

(Testimony of Fred Veatch.)

Q. Up until the time of the closing of this loss, the final closing, based upon the apportionment, which included these two [54] companies that were here, Mr. Webster never at any time, for these two companies, admitted that these two companies were liable, did he?

A. Mr. Webster never admitted that any companies were liable, to me.

Q. He admitted the Liverpool & London & Globe and the—

A. He finally settled, but I never heard him admit that they were.

Q. You were prepared to furnish proof and accept your payment from these companies—there was no controversy between you and Mr. Webster as to the amount of your loss, and you had arrived at it after the salvage men had taken over and cleared up matters there,—was there?

A. No, sir. There was no controversy between us at all in regard to these companies, the two companies defendants in this suit.

Q. I said, had there been any controversy regarding the amount of your loss?

A. With Mr. Webster?

Q. Yes.

A. There was a great deal, yes.

Q. I say, after the time the salvage men cleared this matter up for you, and you finally arrived and knew what your loss and damage was going to be, from that time up to the time of payment by

(Testimony of Fred Veatch.)

the Home and the Liverpool & London & Globe, there was no controversy of the amount?

A. No, sir.

Q. You arrived at the amount of loss and damage and accepted your—

A. On a compromise basis. [55]

Q. Did you not communicate with Mr. Webster regarding that matter in substance as follows: I don't recall whether the communication was in writing or oral, but the substance was that you did not wish to accept the payment from the Liverpool & London & Globe and the Home at that time, for fear of jeopardizing any rights which you might have against these other two companies; that was one reason for your hesitancy in closing with those two companies, was it not?

A. I don't think that question ever came up. I am positive of it. I will be very glad to go through my files at noon and see whether I can find a copy, but I am positive that question never came up.

Q. When you were ready to accept your money from these other two companies you asked that the word "compromise" be written in the proofs?

A. No, sir.

Q. You are sure of that?

A. I am absolutely sure of that?

Q. Who asked that?

A. I don't know. The fact of the business is that every proof of loss that Mr. Webster sent down was marked "compromise" on the buildings and the machinery and those various other com-

(Testimony of Fred Veatch.)

panies that settled, every one of their proofs of loss was marked, typewritten right across, compromise, in typewriter, and then, underneath that, "Proof of Loss."

Q. Was that not done at your request, Mr. Veatch, by reason of the fact that you did not wish to take any position with reference to any of these companies that would prejudice your rights here?

A. No, sir. [56]

Q. Was there ever at any time a suggestion of a compromise on the amount, at the time these proofs were taken? When Mr. Webster first came down there you dickered back and forth in arriving at your loss and damage?

A. We arrived at practically all the loss, I think, on the building—

Q. I am just talking about the—

A. I think we arrived at the loss on practically everything with the exception of the stock and a few small lots of machinery which we agreed on at the other trial.

Q. You mean by stock, your vinegar?

A. Yes.

Q. And when did you agree on your stock?

A. We never did agree on the stock. We accepted a compromise of twenty cents a gallon, but we never did agree on it.

Q. That was a compromise between you and Mr. Webster, made long before there was any proof submitted, or admission of liability by the Home or the Liverpool & London & Globe?

(Testimony of Fred Veatch.)

A. We had served our own proofs of loss on them long before this occurred.

Q. And in those proofs of loss you claimed a much larger loss?

A. Yes, sir,—just the same as we are claiming here.

Q. You didn't make any credit for salvage?

A. At that time there was no salvage.

Q. You claimed a larger amount than eventually showed was your actual loss?

A. Yes, sir.

Q. No matter whose figures you take,—ours or yours? A. Yes, sir, that was right. [57]

Q. This compromise you speak of, between you and Mr. Webster, was made after those proofs were taken, but long before the Liverpool & London & Globe and the Home signified their willingness and readiness to pay?

A. Yes, sir. I can get you the exact date. It was long after we had served proofs of loss on all the other companies, when this other settlement was made.

Q. That was the basis on which those two companies paid?

Mr. DAVIS.—I wish to have these marked.

Certain papers were marked as Defendant's Exhibits 9 and 10.

Q. Exhibits 9 and 10, those are the copies that you sent to the companies, are they not?

A. No, sir, those are not.

(Testimony of Fred Veatch.)

Q. These are the copies you furnished Mr. Webster?

A. Yes, sir. Whenever a fire occurs the first thing I do is to have my stenographer prepare copies of the daily reports, because that is the first thing the adjuster asks for. I didn't even check these. I just had the stenographer copy these off and have them ready for Mr. Webster when he came down, and they were delivered to Mr. Juniper just as soon as he arrived.

Q. Can you tell whether this is the one you kept in your office? Are those supposed to be exact duplicates of the copies you sent to the company?

A. Yes, sir, they are supposed to be. I don't know. Now I can't say. I can't say that those—whether those are the copies that were made for Mr. Juniper or Webster, or whether they are the ones that went to—or whether they are the ones—I am inclined to think that they are the ones that were made for Mr. Webster and Juniper. I don't believe that [58] they—I can't be positive.

Q. They are at least the ones you furnished—they are either the ones—

A. Either the ones I furnished Mr. Webster or—

Q. Or the ones you sent to the company?

A. Yes, sir.

Q. In any event, they are one or the other?

A. Yes.

Mr. DAVIS.—I offer that in evidence.

Mr. MOORE.—They relate to what insurance?

(Testimony of Fred Veatch.)

Mr. DAVIS.—Norwich Union and New Brunswick. Defendant's Exhibits 9 and 10.

Q. Now, Mr. Veatch, in reporting—I believe you stated that you reported for the U. S. Fire and the New Brunswick to the same company?

A. Yes, sir.

Q. And the U. S. Fire was one of the policies that was on this risk? A. Yes, sir.

Mr. DAVIS.—Now I would like to have this marked.

Sanborn Fire Map marked as Defendant's Exhibit No. 11.

Q. Referring to page 4 of Defendant's Exhibit No. 11, I will ask you to look at that and state what that is.

A. That is a Sanborn—a copy of Sanborn's Fire Map of the city of Moscow, which was corrected to October, 1914.

Q. Now, that was—indicates a slight change from the other two maps, the map of 1909 and also the map of 1918, does it not?

A. Yes, sir. [59]

Q. The part that is marked around with what appears to be a lead pencil clear around, that comprises the Leo Brothers? A. Yes.

Q. That is on page 4 of the exhibit?

A. Yes, sir.

Q. The part where there is a large "D," and marked "vinegar tanks," that is the way this vinegar shed and tanks originally stood?

A. The first year, yes.

(Testimony of Fred Veatch.)

Q. There is 35 feet distance between it and the main plant? A. Yes, sir.

Q. There is a little projection there, yellow, on the southeast side of the upper portion of the building,—what is that, marked with an "S"?

A. That is the little shed roof that came down over some scales we had there.

Q. This yellow portion marked "D" was—

A. Was the first small shed buildings we put up there.

Q. This was 35 feet away from the main building?

A. Yes, sir.

Q. At all points? A. Yes, sir.

Q. The portion marked with a large "A" was what? A. That is our pressroom.

Q. And the portion marked with the large "B"?

A. Our loading room.

Q. And the large "H"?

A. That is the two and a half or three-story brick there that we use for bottling and generating, and various purposes of that kind.

Q. Now, when was the large addition made to the "D" as [60] you show it here?

A. I think we started that in 1914, and I think finished it in 1915.

Q. I believe you testified in the former trial, Mr. Veatch—

A. I can't remember exactly, but along in that time.

Q. 1914 and 1915?

A. Yes. It wasn't completed in 1914, because

(Testimony of Fred Veatch.)

it wasn't completed when this map was finished, in October, 1914.

Q. I am going to call your attention to your testimony in the former trial—but when you erected this building you erected it in some way so that you could add to it?

A. Yes, sir. With the intention of adding to it.

Q. And you did add to it, so that it is now what size, as shown on page 4 of the 1918 map?

A. Yes, sir. In other words, this shed was extended out to here, over to here, and back to the main street there.

Q. Now, Mr. Veatch, I notice in a good many of these policies you refer to 240 Main Street?

A. Yes, sir.

Q. What building is that?

A. That was this little building here. That was an arbitrary number that I put on there at my office. It never was on Sanborn's map or any other record.

Q. You did put it on the Sanborn map in your office?

A. You can see that right there. On the 1918 map I think you can see where it was pasted over there, marked in pencil, 240.

Q. 240?

A. Yes, sir, which I had done myself. [61]

Q. You had done it on your 1918 map also.

A. Yes, sir.

Q. And there was that 240 on your map at the time these policies were written?

(Testimony of Fred Veatch.)

A. Yes, sir. My own pencil memorandum. That was underneath. When this map was in this shape. Then we send this map back for correction every so often, and they just pasted a slip over this,—the 240 only shows under this slip.

Q. On your 1918 map?

A. On the 1918 map, yes, sir.

Q. Have you continued to refer to it as 240 in these policies? A. Yes, sir.

Mr. MOORE.—What policies, Mr. Davis?

Mr. DAVIS.—The several policies you were writing? Yes. In the policy, the United States policy, —that is, in the daily report, which I understand you to say was the only communications you ever had with the insurance companies about writing this insurance for them, in the United States policy you covered the following described building, or a building described as No. 240, on the east side of Main Street between "C" and "A" Streets in Moscow, Idaho, $250, on a one-story shingle roof frame building and its additions, if any, of like construction, communicating and in contact therewith, etc., only while occupied for storage of vinegar purposes; $1000 on tanks, all while contained in the above building, and that is described,—on the following described—all situated at 240 on the east side of Main Street between "C" and "A" Streets, in Moscow, Idaho. Now, that daily report you sent down to Mr. Alverson, who was general agent for the United States? [62]

A. Yes, sir.

(Testimony of Fred Veatch.)

Q. And the daily report of the New Brunswick you also sent to Mr. Alverson? A. Yes, sir.

Q. You described the property—your description in the daily report that you sent to Mr. Alverson, for the New Brunswick, as follows: On the following described property, all situate at No. 244 on the southeast corner of Main and "C" Streets, in Moscow, Idaho. $6000 on merchandise, etc., which has already been read. A. Yes, sir.

Q. That is the description which you gave Mr. Alverson for the U. S. policy? A. Yes, sir.

Q. And you applied the two-fifty rate in the Norwich Union policy, or I mean in the New Brunswick policy and the Norwich Union policy?

A. Yes, sir.

Q. And the two forty-five rate in the U. S. policy?

A. Yes, sir.

Q. And the policies you described as two-forty?

A. Yes, sir.

Q. You also applied the two forty-five rate in the Home and the Liverpool & London & Globe policy? A. Yes, sir.

Q. And in both those policies you describe the property insured as the property located at 240 Main Street? A. Yes, sir.

Q. Now, you have no authority to change rates?

A. Absolutely no, sir. [63]

Q. You are bound by the rating schedules?

A. Yes, sir.

Q. And I believe you testified that you had no

(Testimony of Fred Veatch.)

intention or never had any time applied the co-insurance or reduced rate average clause?

A. No, sir, we never have.

Q. You insured two risks specifically?

A. The Home of New York and the Liverpool & London & Globe, yes, sir.

Q. And also the New Brunswick and the Norwich Union? A. That wasnt so intended but—

Q. But that is the way you wrote it?

A. Yes, sir.

Q. You applied the specific rate?

A. Yes, sir.

Q. Referring to your companies you noted to these companies when you applied these rates, you noted the particular reference to the particular rates? A. Yes, sir.

Q. They then would know what you were referring to? That was your only means of communicating the manner in which you applied the rates?

A. Yes, sir.

Q. Now, Mr. Veatch, how much—how many—or how long had you been insuring your pickle works or your vinegar works with the New Brunswick?

A. I think that was the—my recollection is that that was the first policy.

Q. You could tell by the—

A. I could tell by the daily report, yes, sir. [64]

Q. To see whether or not it is a renewal or not?

A. Yes, sir.

Q. You can't tell by looking at the policy, can you?

(Testimony of Fred Veatch.)

A. No, I don't think I can tell by the policy. I could tell by the daily report.

(Mr. Davis handed paper to witness.)

A. The New Brunswick was a renewal—I can find that out for you and answer that question. That is a new policy, yes, sir.

Q. The Norwich Union was a new policy?

A. Yes, sir.

Q. And can you tell how long you had insured with the U. S.?

A. I couldn't tell without chasing that back. That has been renewed several times. Of course that is a renewal of the first policy that was ever written on that frame building.

Q. And in all your U. S. policies you described 240? A. Yes, sir.

Q. And in all your—if you had any renewals of this New Brunswick you described 244, is that correct? A. Yes, sir.

Q. And in all those policies you applied the rate on the property that you described as 240, you described the rate on line 3, page 3? A. Yes, sir.

Q. Took the rate described in the risk at line 3, page 3?

A. Yes, sir, on the contents of the tanks.

Q. And on the property described as 244 you always described the rate used on line 2, page 3, of the specific rates? A. Yes, sir.

Q. Now, in all your policies you refer to this Sanborn map [65] of yours. A. Yes, sir.

(Testimony of Fred Veatch.)

Q. And all these various matters that you refer to when you refer to your company? A. Yes, sir.

Mr. DAVIS.—I think that is all.

The COURT.—I think we will take a recess until two o'clock.

Mr. DAVIS.—I may want to ask you one or two questions about some dailys, if you will look them up.

An adjournment was thereupon taken until 2 P. M. of this date, Friday, May 19, 1922. [66]

2 P. M., Friday, May 19, 1922.

FRED VEATCH, a witness heretofore duly sworn in behalf of plaintiff, upon being recalled, testified as follows:

Cross-examination (Continued).

(By Mr. DAVIS.)

Mr. DAVIS.—I identified this, but I neglected to offer it, Defendant's Exhibit No. 11. I offer it.

WITNESS.—Mr. Davis, before you start in,—one question you asked me this morning, about that word "compromise," or about some correspondence we had on that affair in my file, I find in my file a letter to Mr. Webster about striking out the word "compromise" in the U. S. Fire Insurance Company's proof. That is all I can find in that.

Mr. DAVIS.—If I may see it then.

Mr. MOORE.—Have you the original?

Mr. DAVIS.—I don't think so. Mr. Veatch says he wrote it.

(Witness handed paper to Mr. Davis.)

(Testimony of Fred Veatch.)

Mr. MOORE.—Mr. Veatch, have you the original to which you replied?

WITNESS.—That was in response to a telephone conversation, Mr. Moore.

Mr. DAVIS.—Well, I will have marked these two letters.

Said letters were thereupon marked Defendant's Exhibits 12 and 13.

Mr. DAVIS.—Q. Mr. Veatch, I will hand you Defendant's Exhibits Nos. 12 and 13, and ask you to look at them and tell us briefly what they are.

A. Yes, sir. Those are two letters. I have a copy of this one also, if you would like it.

Q. The original of one letter that you sent to Webster & Juniper? [67]

A. And the other is a carbon of a letter written to Webster & Juniper.

Q. In reference to this loss? A. Yes, sir.

Mr. DAVIS.—I will offer these in evidence, Mr. Moore.

Mr. MOORE.—I think I have no objection to that one. What is that one?

WITNESS.—In regard to that telephone conversation.

Mr. DAVIS.—Defendant's Exhibit 13 admitted. Shall I read this, or hand it to the Court?

The COURT.—Let me have it.

(Mr. Davis handed paper to the Judge.)

Mr. MOORE.—There will be no objection.

Mr. DAVIS.—Q. This pencil mark on there was not on there when you wrote it? A. No, sir.

(Testimony of Fred Veatch.)

Mr. DAVIS.—I offer in evidence Defendant's Exhibit 12, then, which it is agreed may be admitted.

(Mr. Davis handed paper to the Judge.)

Q. Mr. Veatch, I am going to ask you to explain the physical structure of those buildings, briefly, so that—first, let me ask you—

Mr. MOORE.—I think His Honor ought to see this.

Mr. DAVIS.—Yes.

Q. Explain the physical structure—First, let me ask you, do these Sanborn map numbers conform to the street numbers?

A. In some cases they do, and in some case they are arbitrary.

Q. In the cases where you have a complete set of street numbers, they endeavor to conform to the street numbers? [68]

A. In most cases, wherever they can.

Q. For example, 244 is also 244 Main Street, in this case? A. I am inclined to think so, yes.

Q. And these maps are furnished you by the company, and when the Sanborn surveyors correct it, you get the corrections? A. Yes, sir.

Q. And the companies have copies of these maps to refer to, and you refer this to them?

A. Yes, sir.

Q. Now, take the factory building, 244, which is the northern portion or part marked around with the pencil, and you have already described the general structure—this portion, the southwest

(Testimony of Fred Veatch.)

corner is brick and the other portion is frame; the strip that runs across to the south is also frame, is it? A. Yes, sir.

Q. What is the distance between the buildings?

A. The driveway, I think—I am not sure, but I think it is 15 or 16 feet, somewhere along there.

Q. A concrete driveway?

A. Up to here. Then there is a wooden driveway that rises up to the scale there.

Q. And then—

A. Then it is a wooden construction driveway out to the alley, yes, sir.

Q. And this vinegar tank, the 240 here, is a wooden building? A. Yes, sir.

Q. And when—how is it inclosed?

A. It was boarded up on this side and on this side.

The COURT.—That is, on the side next to the street? [69]

A. Yes, next to the street, and on the south side it was boarded up all the way with weather strips up and down, vertical boarding on that. There was a roof on it that came down on this side.

Q. On the south side?

A. Yes, on the south side, and on the north side the roof was a little steeper, but not as long as on the south side.

Q. It was a V-shaped roof?

A. No. It isn't a V-shaped roof, but it is more like that (indicating). I don't know just what you would call that, to make it intelligent. But now

(Testimony of Fred Veatch.)

referring back to that first map, this part here in yellow, that frame building was all taken down.

Q. We will get to that later. Just describe this building here.

A. This was boarded down on the north side, I guess, five or six feet from the top; then it was open from there to the ground.

Q. How far is it to the ends of the boards, down to the ground?

A. Oh, I would judge it was 16 feet possibly, 15 or 16 feet, somewhere along there.

Q. Then where this little shed is, over the scales, that is not inclosed in any way, is it?

A. No, sir—just runs from this building right to that.

Q. Just a canopy covering over the scales?

A. Yes, sir, part of the driveway.

Q. Without marking it, just indicate what portion was reached by the fire?

A. Just this part. [70]

Q. That is already marked with ink; a portion around which the ink mark is drawn is the only portion which was reached by the fire?

A. Yes, practically.

The COURT.—It is the only portion involved here. Of course the main building was reached by the fire.

Mr. DAVIS.—Q. There was no vinegar stock damaged in the building?

A. No, none in the main building was damaged.

Q. Now, Mr. Veatch, how many storage tanks or

(Testimony of Fred Veatch.)

vinegar tanks did you have in the main building, in 244?

A. Well, I don't know as we have got any storage tanks in there. We have got a tank right here, on the east side of the brick, where there is one twelve-foot tank which is used as a loading tank, about 7000 gallons. On the north side of the brick part, in the loading room, we have two twelve-foot tanks, a capacity of about 7000 gallons each. Then in the basement of this room here we have what we call our mixing tank, which holds about 6000 gallons. Then we have four receiving tanks that are I think twelve feet in diameter and about five and a half or six feet high, that have a capacity of about four or five thousand gallons each. Then on the third floor we have two small tanks, into which we pump the vinegar when it is to be pasteurized. And then up in the little third story that is built clear on top of this, we have three small tanks there, with a capacity of probably six or seven thousand gallons, in which the vinegar stock is pumped, and from that it flows into the generators by gravity. Our storage room in there is very limited, because we are shifting from one place to the other all the time. [71]

Q. It is just the completed stock that is put out there at the vinegar tank shed?

A. No, sir. Can I explain?

Q. Yes, briefly as you can.

A. Well, of course the wagons come in here and dump here. The apples are dumped there into a

(Testimony of Fred Veatch.)

conveyor and carried up here into a bin, and then we have a grater there and two big hydraulic presses here. The juice is pressed out of these apples and pumped over here into the tanks.

The COURT.—In the tanks in the shed in question?

A. Yes, sir. Then as soon as the fermentation is through, we pump this vinegar stock up into the third story of this building here. From that they go through the generators, and trickle down into the storage tanks in the basement. When they fill up they are pumped out then, these tanks are cleaned, and then re-filled with the finished product.

Q. At the time of the fire what proportion of the stock in the vinegar tank shed there was finished product?

A. It was all finished.

Q. It was all finished product at that time?

A. Yes, sir.

Q. You don't know how much of the stock that you had on hand was in the vinegar tank shed and how much in the factory building, do you?

A. Approximately, yes, sir, because we invoiced immediately. There was about 50,000 in this building, and from about a hundred and thirty here.

Q. A hundred and thirty out in the vinegar tank shed? A. Yes, sir.

Mr. MOORE.—What exhibit is that, Mr. Davis? [72]

(Testimony of Fred Veatch.)

Mr. DAVIS.—That is Plaintiff's Exhibit 3.

Q. Now, Mr. Veatch, to make this matter plain to the Court, the way the rates are applied and the company is advised of what they are insuring, —the company has Sanborn maps in their office in San Francisco, that is true, is it not?

A. I would imagine that that is true, yes, sir.

Q. And they have also the rating schedules in their office? A. I imagine so, yes, sir.

Q. And you, in writing your insurance, refer to the maps and the rating schedules?

A. Yes, sir.

Q. Now, the rating schedule that is in use in Moscow is compiled by the Pacific Board of Fire Underwriters rating department, is that not correct? A. I understand so, yes, sir.

Q. And that service is used by all these companies known as the board companies?

A. Yes, sir.

Q. And both these companies involved here are board companies? A. Yes, sir.

Q. Their rating man surveys the town for fire hazard, and then by their computations arrive at a correct rate to be charged for each risk?

A. Yes, sir.

Q. And then those risks, those rates are promulgated by the board, they are sent out—are they sent direct to you, or do you get yours through the company?

A. I think they are sent direct from the Board of Fire Underwriters. [73]

(Testimony of Fred Veatch.)

Q. And under your contract with the companies you cannot deviate from those specific rates?

A. No, sir.

Q. In Moscow, that space here is a certain building, and you must charge one-fifty on that, and over there is another building, and you must charge two-fifty, and you can't deviate—you must follow those rating schedules exactly? A. Yes.

Q. You have been in the business 30 years?

A. Yes, sir.

Q. You are familiar with the practices of insurance companies and their manner of applying rates? A. Yes, sir.

Q. You are familiar with the rule for applying coinsurance reduced rate average clause?

A. Yes, sir.

Q. And you testified that that was never contemplated, or had never been applied in this risk?

A. No, sir, never.

Q. Now, taking into consideration all those things, and your experience of many years as an insurance man, do you know of any way in which the vinegar tank shed, taking into consideration that rating schedule, and the factory building, 244, could have been written under one coverage in a policy?

A. I think so, under the printed forms that the boards put out.

Q. And following those instructions, do you know of any way that you could arrive at the two risks under one coverage, and still adhere to the in-

(Testimony of Fred Veatch.)

structions and the rates? I believe you testified on the former trial that there was none, [74] did you not? A. That there was what?

Q. That you knew of no way except by the reduced rate average?

A. Yes, the reduced rate average.

Q. That is the only way that they could be covered under one coverage?

A. If they were two buildings that would be true, yes.

Q. Just as the rate stands, a two-fifty rate on the vinegar factory, and a two forty-five rate on the storage shed, applying those rates, there is no way except by using the reduced average clause and applying the higher rate, there is no way by which you could write them under one coverage, is there?

A. I still don't see why the specific insurance that I wrote on there couldn't be written; I still can't grasp that,—as well as the blanket covering.

Q. How would you apply the rates in covering 244 and the building known as 240, how, under one rate, and covering them both, what rate would you use?

Mr. MOORE.—Mr. Davis, I would ask you to reform your question. There was no building known as 240.

Mr. DAVIS.—I will use it in the sense that he used it.

WITNESS.—My impression was that the form that we used on those policies, where it says on

(Testimony of Fred Veatch.)

there, "additions communicating and in contact therewith," cover it.

Q. When you receive these rate books from your company— A. Yes, sir.

Q. —you are supposed to abide by the instructions contained therein. Now, did you bring that rate book that I asked [75] you for?

A. No, sir; but I can send over and get it.

Q. I wish you would. That rate book contains your instructions, does it not, as to how to apply those rates?

A. Yes, sir. If I can't get that one, I can bring my present one, which has the same instructions.

Mr. DAVIS.—I would like to have it now, your Honor.

The COURT.—Can you send for it?

WITNESS.—Yes.

Mr. DAVIS.—Q. Now, when there is a rate, a specific rate, fixed by the Board of Fire Underwriters, which is communicated to you, that is the rate that you must use, is that not correct?

A. Yes, sir.

Q. And that rate applies to the entire risk, does it not?

A. Yes, sir, it is supposed to apply to that entire risk.

Q. And when a rate is fixed identifying a risk, that identifies the specific risk, does it not?

A. It is supposed to, yes, sir.

Q. Now, then, explain how—where you have two rates or two separate risks,—you can write the two,

(Testimony of Fred Veatch.)

the different, the risk, under one coverage, at one separate rate?

A. That rate sheet there that you have in your hand, Mr. Davis, of course, says, next south vinegar tanks. Our heavy values nine or ten months out of the year are in those tanks. And part of the time I carried a certain amount of specific insurance under the two forty-five rate. It is impossible for us to carry an average clause down there, because that vinegar is shifting practically every day from one building to the other, one part of the building to the other; there is no means of bookkeeping that we could put in down there that we [76] could keep track of the vinegar that would be in one part of that building one night and what was there the next night, without making the actual inventory and measurement, and we have always carried a certain amount of specific insurance on those, and as the stock went down we would cancel out on that stuff.

Mr. MOORE.—Under the two forty-five rate?

A. Under the two forty-five rate, yes, sir.

Mr. DAVIS.—Q. Then the insurance that was written which describes 240, was specific on the vinegar tank shed, is that correct?

A. On the contents of the vinegar tanks, yes, sir.

Q. Now, again referring to this word "south" that you speak of. On this rate manual, south, first, southeast corner of Main and "C," 244.

A. Yes, sir.

Q. Then there is "South."

(Testimony of Fred Veatch.)

A. Yes, sir, no number.

Q. Then there is another South 244.

A. Yes, sir.

Q. Is it not a fact that that rate schedule refers to separate risks there, each one separate?

A. I don't understand it so, no, sir.

Q. You did understand it so, though, when you applied, took a two forty-five rate for one and a two-fifty for another, did you not?

A. No, sir, I did not. I understood I could write specific insurance at that rate on that, and then write blanket insurance to cover the—

Q. Does your rate manual tell you what to do in regard to it? [77]

A. I wouldn't be positive. I wouldn't say until I can read it and refresh my memory on it.

Q. Isn't it a fact that if you are using a general coverage, that you must average your rate?

A. I don't understand so.

Q. Or apply for a specific rate for the entire building, from the Board of Fire Underwriters?

A. I don't understand so, no.

Q. Then, Mr. Veatch, let me read this from your testimony in the former trial. I said: "And where there is a rate fixed for a certain risk, that applies to the entire risk?" "I think that is correct. I think there are some exceptions to that rule." "You are referring to the average clause, but you have never used the average clause in writing this particular kind of risk?" "No, sir." "The average clause has no bearing on this particular kind

(Testimony of Fred Veatch.)

of case?" "No, sir." "You identify to your principals the particular insurance you desire, or that you are binding with them, as a single particular risk in all cases? In other words, you never write two separate risks at separate rates, in one policy?" "No, sir." "That cannot be done, according to your rules or the rules of your principals?" "I don't think so. I have never done it, anyhow, or attempted to do it." That was your testimony in the former trial, was it not?

A. Yes, sir, and that is still correct.

Q. That was your belief at that time, and that is your belief now? A. It is my belief now, yes, sir.

Mr. DAVIS.—I think that is all. [78]

Redirect Examination.

(By Mr. MOORE.)

Q. Looking at Plaintiff's Exhibit 3A, tell us how the building which you said contained the press-room is connected with the building known as the vinegar tanks?

A. By a roof from the vinegar tank room which runs over and is tied into the roof on the press-room.

Q. Now, are the tanks in the vinegar tank room, we will call it, or is that building or that addition, is it used in connection with the manufacturing part of the establishment?

A. Absolutely. It is the most important.

Q. How is it used in connection with the manufacturing part of the establishment?

A. First, we store the raw juice in there.

(Testimony of Fred Veatch.)

Q. How is it used? You say you store it. How is the raw juice passed backwards and forwards?

A. Pumped through a hose. We have pumps underneath one of these hydraulic presses, and a two-inch hose attached, which leads over through these tanks, and this juice is pumped into these tanks as fast as it is pressed.

Q. Then, afterwards what further use in the processes, in common with the parts of the building, assuming that there are two parts of the building there?

A. After the fermentation takes place, after the sugar in the juice has been turned to alcohol, then we pump it back through the generators, which converts the alcohol into acetic acid. That goes from the generators into the receiving tanks, and then it is pumped—as fast as these tanks are emptied they are cleaned out, and the finished produce is put in there. [79] Then, as a finished product we pump it back up into the third story, and that which is bottled is pasteurized and filtered. That which is barreled is only filtered.

Q. Where is your shipping-room?

A. On the north side of the brick building, next to the railroad track, on the north side.

Q. Across the manufacturing part of the building north from the vinegar tank shed or room?

A. Yes, sir, next to the extreme, to the line along "C" Street, is the loading room.

Q. What facilities have you for shipping out there?

(Testimony of Fred Veatch.)

A. We have side-tracking in there.

Q. What railroad? A. The Inland.

Q. Tell us how, in what different methods or manners, do you ship the finished product from your plant.

A. We ship it in bottles and barrels, and in tank cars.

Q. Now, does the tank shed, as an addition to the manufacturing plant, or that part of the plant known as the manufacturing buildings and rooms, is it in contact with it?

A. It is joined together, yes, sir, not only with the roof, but it is closed here in front with a gate, which I would judge would be ten feet high, and then there is a gate back here on the alley, and it is all inclosed. There is a tight gate in front, where it opens out on to Main Street.

Q. What about sewerage connections of the building?

A. We are connected with storm sewers on both sides.

Q. Does it carry to one point from the storm sewer, the drainage from each of those buildings, carried to the storm sewer? [80]

A. Yes, sir, through the press-room is a sewer that comes right straight out, and then there is a sewer line that comes down through the center of the tank shed and comes to the same storm sewer out in the alley.

Q. Sewerage that comes from the manufacturing portion of the plant, do you know whether it crosses

(Testimony of Fred Veatch.)

on the surface before going into the sewer proper, does it cross on the surface of this—

A. From the second story here, that water and waste comes down on to this paved driveway, through a concrete trough, out to the center of this tank-room.

Q. And all of the buildings there are connected together or in contact? A. Absolutely.

Q. And all used for the common purpose of manufacturing and transporting vinegar?

A. Yes, sir, absolutely.

Mr. MOORE.—Now, Mr. Davis, do you contend at all for any nonliability on the ground that Mr. Veatch, as agent of the company when writing the policies, agent of the defendant companies when writing the policies, owned an interest in the property insured?

Mr. DAVIS.—Your question is broad. I don't know whether the companies did or did not know. I will not answer your question. I will stipulate this, that whether they knew or not, I don't know, but I will stipulate that the companies knew that Mr. Veatch and Leo Brothers were the same people.

Mr. MOORE.—And that as agent, and while writing the insurance, issuing the policies, as agent of the defendants, they knew that he was interested as a property owner? [81]

Mr. DAVIS.—I will stipulate that they knew that Mr. Veatch and Leo Brothers were practically the same thing.

(Testimony of Fred Veatch.)

Mr. MOORE.—Q. Now, coming back to this specific insurance, you say that your rate book provides for a rate of two forty-five,—that is, two dollars and forty-five cents on the thousand or—

A. $24.50 a thousand.

Q. Or $2.45 a hundred? A. Yes, sir.

Q. That the party or authority who has or fixes the schedule of rates has given a special rate of $2.45 on the contents of the tank shed?

A. On vinegar tanks, it says.

Q. On the vinegar tanks? A. Yes, sir.

Q. The rate on the manufacturing part of the plant is $2.50. A. Yes, sir.

Q. Now, you say it has been your practice to write specific insurance at $2.35 and limit it to—or $2.45—and limit it to the tank sheds, or your fixed number yourself, your arbitrary number of 240, on Main Street? A. Yes, sir.

Q. Now, then, you say it is your understanding, as an agent, and your practice, and has been your practice, to write under the rate fixed—

Mr. DAVIS.—Pardon me. This is pretty broad for redirect examination, your Honor.

The COURT.—Yes. I think the form of the question goes beyond the answers that the witness has heretofore made, and it is, of course, leading. [82]

Mr. MOORE.—Q. Tell us, then, what your understanding is as to the covering of a policy carrying a rate of $2.50, upon property described as being in Block 102, No. 244.

(Testimony of Fred Veatch.)

Mr. DAVIS.—I object to that your Honor, as calling for a conclusion. That doesn't call for an expert's opinion as to the manner of applying rates. It calls for a conclusion of law.

Mr. MOORE.—It goes to the question of intent.

Mr. DAVIS.—Yes, but it must be proven by the facts and circumstances.

Mr. MOORE.—He can go as far as to say exactly what his intent was, as an insurer.

Mr. DAVIS.—Not until he shows that the other party heard it and understood it in the same way, or he wouldn't have any contract.

Mr. MOORE.—It also is pertinent to the cross-examination with reference to the average clause, and his understanding.

Mr. DAVIS.—He could testify what is the custom. He can testify as to his knowledge of the insurance rate and the application of rates, but he can't testify as to his understanding of the specific matter, or what intent he had in mind when applying this. That is a fundamental rule, I think.

The COURT.—I think I shall sustain the objection.

Mr. MOORE.—Allow us an exception.

Q. Now, Mr. Veatch, on cross-examination you testified with reference to a compromise or settlement of the claim of Leo Brothers against the London, Liverpool & Globe and the Home Insurance Company, each carrying a policy of $10,000 upon the vinegar, that, if I remember correctly, that

(Testimony of Fred Veatch.)

your compromise with the adjuster was—was it twenty cents a [83] gallon?

A. Twenty cents a gallon, yes, sir.

Q. Was there any other consideration that entered into that settlement? A. Yes, sir.

Q. What was it?

A. The man who salvaged the vinegar paid us three cents a gallon for loading it out.

Q. What was it worth for loading it out?

A. About a half a cent a gallon.

Q. Who was the man that made the purchase?

A. Mr. Divans, of Seattle.

Q. Under that arrangement what price did you receive for the vinegar?

A. Twenty-three cents.

Mr. MOORE.—Take the witness. I believe that is all.

Recross-examination.

(By Mr. DAVIS.)

Q. Twenty-three cents was the net, was the price that you finally received for your vinegar?

A. Yes, sir.

Q. A gallon? A. Yes, sir.

Q. And that brought your net loss down to $19,000, as agreed upon at the time? A. Yes, sir.

Q. That is the way you arrived at that?

A. Yes, sir.

Mr. DAVIS.—That is all. [84]

The COURT.—Just a moment, Mr. Veatch.

(Testimony of Fred Veatch.)
(Questions by the COURT.)

Q. How does it happen that you fixed this number 240?

A. If I can have that old map, Judge, I can explain it to you, that 1909, I think it is. Now, as I say, when we started in, we put up a small shed building, and we had, I think—we put up a small shed on the south side of our ground, and put in three tanks only. That shed was boarded up on this side and on this side.

Q. Yes, I understand that. You testified to that in substance before. I mean how did you happen to hit upon the number 240?

A. I figured out the way the city numbered it, about the distance between this number and that number, and I put on there, for my own convenience, the number 240, and inadvertently on one policy which was renewed, which was fritten I think first in 1913 or 1914, that was renewed every year just the same. I used that 240 on my specific insurance, and have done it right straight along, covering the juice, for my own information. And when the stock begins to run down I begin to cancel out my specific insurance as it leaves this tank for the last time, as it is shipped, and I used that 240 merely to keep from looking through my records to show just the specific insurance that I wanted to cancel out.

Q. I notice here on the map the number 224, and this one is 244. A. 244, yes, sir.

Q. Now, if there were buildings put on that block

(Testimony of Fred Veatch.)

in between those two numbers it would be customary to fill in between 224 and two— [85]

A. Yes, sir. They have invariably done it. I can show you probably some differences some place on this map between 1918 and that.

Q. What I was trying to get around to, was how would the companies to whom you made these several reports of the specific insurance upon this building that you refer to as 240, know on what property, what property was covered by those policies? As I understand now, they wouldn't have in their offices your notation of the number. They would simply have this map, which would be, we will assume, uniform all over the country.

A. Yes, sir; it is supposed to be.

Q. Now, when you reported, in the writing of a policy, the number 240, on the east side of Main Street, etc., how would the agency or the principal to whom you sent this report know what property you had intended to cover?

A. Judge, this risk is known as a special hazard, among the insurance people. When a risk of a special hazard is sent in to the company, they immediately make out an inspection slip and send to their special agent who travels these fields. It is his duty. And not only—he receives orders from the company to inspect that property both physically and morally, both for physical hazard and the moral hazard, the first thing they do when they get to that town. So that risk was inspected by

(Testimony of Fred Veatch.)

the special agent of every company that has ever had a line on there since 1911.

Redirect Examination.

(By Mr. MOORE.)

Q. Does this report which you send in to the company, which carries the number, carry the description of the property as [86] being between "A" and "C" Streets on Main Street, between "A" and "C" Streets? A. Absolutely.

Q. Or at the southeast corner of the intersection of Main and "C" Streets?

A. Yes, sir, absolutely.

Q. And does it carry a rate?

A. It carries a rate.

Q. Your report carries the rate?

A. Carries the rate, yes, sir.

Q. Now then, could not the insurer ascertain from your report, if the description of the property in the policy was the same as the description of the property here, then would not the rate indicate what part or portion of the property the risk was upon?

Mr. DAVIS.—That is a conclusion, your Honor. I object.

The COURT.—That is the contention of Mr. Davis with regard to the other policies too, I assume, that is, that the rate—

Mr. MOORE.—Well, I wouldn't say the rate—it is more than descriptive. Of course it is descriptive, but that isn't its only purpose, of course, but

(Testimony of Fred Veatch.)

it would be, that is, the insurer could ascertain, I can see, from the rate that goes in with the report, that if he gets the description as put upon the Sanborn Fire Map, with the rate, and there is a different rate for two different parts of the building, or the entire risk, then they know whether they have got a general covering on the entire building or a special covering for the special rate. [87]

The COURT.—Well, the descriptions, as you sent them in these reports, which refer to policies covering merely these tanks or the vinegar in the tank shed there, the description there, other than the number, is precisely the same description as you inserted in the reports in the other policies?

A. Yes, sir.

The COURT.—Referring to 240.

A. Absolutely, identically the same.

The COURT.—What I was trying to get at is as to how the companies to whom these reports are made would know that you were limiting the policies containing the number 240 to the tank sheds or the contents of the tank sheds.

A. I don't know as there would be any way that they could do that back there until their specials came through; and on the other hand, the values, our values, are in those tanks nine months out of the year.

The COURT.—I understand that. Of course the situation is a little peculiar here because of the fact that the witness acted in a dual capacity. Suppose you had been writing this policy merely as the

(Testimony of Fred Veatch.)

agent of the insurance company, writing these policies as the agent of the insurance companies, for third parties, the owners, how would either the owner or the company know that the coverage of the policy was limited to the tank sheds? I refer to the policy of 240. How would either party be able, in case of loss, to prove that fact, except, of course, by reference to the lead pencil notation which you made upon this plat in your office,—but eliminating that, how would either party be able to identify the property covered? [88]

A. Now, I don't know as I can answer that question, Judge. They would know this from my daily report, I think, on those things, that the rate on those two policies there says line 3.

The COURT.—One other question in that connection. Is there any more reason why the company to which you would make these reports of the 240 coverage could conclude that you didn't intend to cover the main building, as we will call it, than for the company to conclude that 244—

A. If it was the same covering, I don't see how they could tell.

The COURT.—You mean the same rate?

A. No. I mean the same covering, if the forms are the same.

The COURT.—I don't think I made that question clear. Here you make two reports, one of them the 244 policy and one of them the 240 policy.

A. Yes.

(Testimony of Fred Veatch.)

The COURT.—The balance of the descriptive language in the report is identical. A. Yes, sir.

Q. Now, if the company to whom you make the 244 report is under obligation to conclude that the coverage there is of all the property, wouldn't it be, by parity of reasoning, necessary for the company to whom you made the other report, the 240 report, to conclude that that policy covered all of the property?

A. I am satisfied—I may be mistaken about that, but my recollection is that when Mr. Webster first came down, he said if the entire property had been destroyed there would [89] have been no question raised on that at all. Only this one part of that property was destroyed.

The COURT.—But I am referring back to a time before there was any loss at all. I am simply trying to get into my mind how your principal or principals would know what you were doing here, what you were covering by these several policies. Of course, if their plats had carried the two numbers, as yours did by the lead pencil notation, 244 and 240, then it would be quite clear, I think, that the policies would be limited in their coverage to the particular property.

A. I don't think there is any question about that, but I understood this, that the tanks was something that would be pretty hard to burn; they were full of liquid practically all the time, full of water when the vinegar is moved out of them, and for that reason they made a little bit better rate

(Testimony of Fred Veatch.)

on that than they did on the balance of the property. Now, as I say, I can't tell how possibly the companies might have known where it said 240, whether or not that covered 244 or not. I couldn't answer that. But I do know that every risk was inspected by a special agent. Every time a policy was written their special agent came and made a report on that property to their principals.

The COURT.—Can you tell me offhand how much insurance, in the aggregate, you carried specifically upon 240?

A. What we carried on the stock,—we carried $20,000.

The COURT.—I mean exclusively upon that.

A. Yes, sir.

Q. That didn't go to the balance?

A. That was $20,000.

The COURT.—$20,000, that is, exclusive of these policies [90] under consideration here?

A. No. That includes.

The COURT.—You didn't understand me then. What was the aggregate of the insurance you carried with reference to 240?

A. The specific amount?

The COURT.—Yes.

A. $11,000. No,—$20,000—$20,000—$10,000 in the Liverpool, London & Globe, and $10,000 in the Home of New York. That was the specific amount.

The COURT.—Those you report as 240?

A. As 240, yes, sir.

(Testimony of Fred Veatch.)

The COURT.—And that you were carrying in July and also in December, 1920, when these two policies under consideration here were written?

A. Yes, sir.

The COURT.—And you continued to carry that?

A. Out stock goes in in November.

The COURT.—How much were you carrying with reference to 244?

A. You mean on just stock or on—

The COURT.—Yes, on stock. A. On stock?

The COURT.—Yes.

A. That would be $11,000.

The COURT.—Just these two policies?

A. Just these two policies, yes, sir.

The COURT.—These are the only two policies then that you carried on stock, having reference to No. 244?

A. Yes, sir. As I say, our values were in the big tanks all the time, but they are shifting back and forth, and we [91] could never tell which part had the most.

The COURT.—About how much—the maximum, in the way of stock, did you carry in the other building, the main building?

A. It is impossible during the generating season, it is impossible to carry more than twenty-one or two thousand gallons in there. When we get through—

Q. Even at that time you would have unfinished product in there too, wouldn't you?

(Testimony of Fred Veatch.)

A. No. Our stuff had all been generated at the time of this fire.

The COURT.—During the manufacturing season you would have—

A. Unfinished, yes, sir.

The COURT.—You would have some unfinished—

A. Right on the start we had no finished product in there. In November, when we finish up our season, there is nothing in there but vinegar stock. Then as we generate it and manufacture it, then we pump the manufactured product back in there.

The COURT.—I was trying to get the relation or ratio, if I could, between the value of the stock which you would ordinarily have in the main building and that in this tank building, that is, approximately on the average.

A. Fifty thousand gallons would be the most that could be in there at any time, and that would only be after we was through generating, when we could use all our tanks for storage.

The COURT.—That is its total capacity?

A. Yes, sir, in the main building.

The COURT.—You don't know the origin of this rate on this [92] rate sheet for the tanks?

A. No, sir. There has been two rates on that.

The COURT.—I notice this little sheet put in here, this rate sheet, does not give a specific description of the property by numbers. Do any of the rate sheets do that?

A. Yes, sir. I think that does too, Judge, now.

(Testimony of Fred Veatch.)

Mr. MOORE.—Right at the top I think you will find it, the Sanborn map description, block 102.

The COURT.—Yes, but 244 and 240 is what I am—

Mr. MOORE.—240 isn't there. 244 is there, though.

The COURT.—Where is 244? I overlooked that.

WITNESS.—It is right at the top. It says, "Vinegar plant," Judge, 244.

Mr. MOORE.—Vinegar plant.

The COURT.—Well, that is all I desire to ask him.

Mr. MOORE.—I want to ask him a question or two along the line you asked him.

The COURT.—You may do so.

Redirect Examination.

(By Mr. MOORE.)

Q. Assuming now, Mr. Veatch, that you was insuring with the same company $2000, a general insurance or blanket insurance policy, to cover vinegar in the plant buildings, and you would describe that as 244, with the rate two-fifty, or $2.50; and you wrote another policy with the same company, that you wanted to make a specific insurance upon vinegar in the tank sheds, at this reduced rate, you would describe that with the same description of the property—

Mr. DAVIS.—I object to the form of the question.

Mr. MOORE.—Let me get the question. [93]

(Testimony of Fred Veatch.)

The COURT.—No. The question is highly leading.

Mr. MOORE.—I hadn't asked him the question. Assuming that he did that, then I was going to ask him to tell us what he did, how it could be determined whether or not the insurance was—

The COURT.—Read the question, Mr. Reporter.

(Question read.)

Mr. MOORE.—Let me start that again.

Q. Assuming, Mr. Veatch, that you write a blanket policy with an insurance company, on vinegar contained in the buildings of the plant, at a rate of $2.50, you also write a policy for specific insurance upon vinegar in the tank-sheds, at the reduced rate of $2.45, you make your report to the company covering the same property as described by the Sanborn Fire Map, and in that report you show the rates for the blanket insurance, or the rate, rather, for the blanket insurance and the rate for the specific insurance, how would the company know what property it was insuring under its separate contracts of insurance?

A. The rate book would indicate that.

Mr. MOORE.—That is all.

Recross-examination.

(By Mr. DAVIS.)

Q. Did you in all these cases, in sending in your daily reports, mark on your daily the page and line referred to in the rate book?

A. I should have done it.

(Testimony of Fred Veatch.)

Q. If you did not, you should have done it?

A. Yes, sir.

Q. I notice in one of these dailies here it was not done, [94] but in one of the copies that was furnished it was done. Would that indicate that you had done it in the one sent to the home office and didn't do it—

A. The copy sent to the home office should be identical with the one I kept at my office.

Q. You had no authority to deviate from the rates? A. No, sir.

Q. And you never undertake to do it?

A. No, sir.

Q. And the entire instructions regarding the manner in which you write and the rate you charge are contained in the manual furnished you by the board and your company? A. Yes, sir.

Mr. DAVIS.—I think that is all.

Redirect Examination.

(By Mr. MOORE.)

Q. It has been suggested to me, Mr. Veatch, that I interrupted your answer when you were explaining about this risk being a special hazard and was inspected when the insurance was first written, by the agents of the company. Will you go on and explain that again?

A. Well, I thought I had explained that. That risk is known as a special hazard, and immediately the report goes in to the head office, of a special hazard, they immediately make out an inspection

(Testimony of Fred Veatch.)

slip, and send it to the special agent who has charge of the territory in which that is located.

Q. That is upon the first policy issued, is it?

A. I am inclined to think it is followed up on every policy, whether it is a renewal or whether it is not. I know it has been inspected by practically every special that has [95] come through this country, that has had a line on that plant.

Q. What do they do when they get here?

A. I don't know. They go and make that inspection. They come in the office and locate it on the map and ask what part of the town it is in.

Q. Do they make an inspection of the property itself?

A. Yes, sir. And then they find out who the owners are of that property.

Mr. MOORE.—That is all.

Recross-examination.

(By Mr. DAVIS.)

Q. You don't have anything to do with those inspections, then? A. No, sir, not a thing.

Q. They don't confer with you about it?

A. No, sir not a thing.

The COURT.—There is one thing yet, Mr. Moore, that I don't understand. It is suggested by your questions. You spoke of writing a blanket policy. Now, if the witness can explain, it may be of some help. But how would the company know that he intended to write a blanket policy, as you call it? How would the insurance company, I mean, know

(Testimony of Fred Veatch.)

that he intended that the policy carrying the number 244 should extend to this tank building?

Mr. MOORE.—You are asking me that?

The COURT.—I am suggesting the inquiry to you, in order that you may throw some light upon it by interrogating Mr. Veatch.

Mr. MOORE.—That is what I asked Mr. Veatch, —how the managers of the company would know that one was a blanket [96] policy and that the other was specific insurance.

WITNESS.—Judge, those forms, I don't know how I could make it any plainer than they read themselves.

The COURT.—I don't believe either one of you quite understand the question in my mind. When you send in a report of a policy on 244, how is the company to know that that policy, even though it carries the rate $2.50, which you have suggested, how is the company to know that it extends to this shed and the contents of this shed?

A. The form of the policy reads, "and its additions, communicating or in contact therewith."

The COURT.—Isn't that true also of the 240 policy?

A. Yes, sir. The only way they could get at that would be by reference to their rate book. That says, "line 3, tank sheds."

The COURT.—Then, if the rate is the criterion, a rate of $2.45 in one case and a rate of $2.50 in the other, and a policy—two policies come in, with the same description, one carrying $2.45 and one $2.50,

(Testimony of Fred Veatch.)

why wouldn't they naturally conclude that one is limited to the property on the corner and the other is limited to the property to the south?

A. I can't—I don't know.

The COURT.—He states that these policies carry the provision, "with the appurtenances, etc." Now, when we get the policy on 240, it also has the appurtenance clause. Why would the company conclude that that policy extended to the building on the corner?

A. Judge, that was absolutely an arbitrary number of my own. There is not one other Sanborn map in the country—it [97] is not used on any other Sanborn map that was ever issued. If there had been any question in the company's mind as to that, they could have very easily found it out. Their specials could have found that out very easily when they were here. That was an arbitrary number. Ordinarily—I don't know—if I use a wrong number on a policy I am what they call "tagged" for it very quickly. They call my attention to it. The Sanborn map and the rate book have never had in it any other number but 244, so far as the insurance records are concerned.

The COURT.—Any further questions,—either side?

Recross-examination.

(By Mr. DAVIS.)

Q. Did you find out, Mr. Veatch, whether or not these were renewals, and did you bring your—

(Testimony of Fred Veatch.)

A. No, sir; I didn't have time to look that up at noon. I can dig that up and come back with it.

Q. Wouldn't these dailies show? One of them says new, on it, and the other gives the same number.

A. Yes, so I can't tell you, but I am inclined to think that both of those are new policies.

Q. Mr. Veatch, you have these rate books, which are your only instructions. Will you find in there any place that authorizes the writing of blanket coverage where there are two specific rates given by the rating bureau?

A. I don't think I could in any limited time. I don't know whether I could at all.

Q. You are not familiar with any such rules as authorize that, anyway? [98] A. No, sir.

Q. Mr. Veatch, now this word, line 3, page 3 of specific rates of Moscow, south, vinegar tanks, rate $2.40, that doesn't refer to the building, but refers to the occupancy, is that not correct?

A. I have judged it to be, yes, sir.

Q. On the left-hand side all these are buildings; where that says, southeast corner "C" Street, that means the building on the southeast corner of "C" Street, is that not correct? A. Yes, sir.

Q. And where it says south, that means the building just south?

A. Not necessarily. The building south of it is a number.

Q. But if there is no number on the Sanborn map, and there doesn't happen to be a number, they

(Testimony of Joseph M. Kimberling.)
refer to it as south, and that means the building south, does it not? A. Yes.

Mr. DAVIS.—I think that is all, Mr. Veatch.

Mr. MOORE.—That is all.

(Witness excused.) [99]

Testimony of Joseph M. Kimberling, for Plaintiff.

JOSEPH M. KIMBERLING, produced as a witness on behalf of plaintiff, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. MOORE.)

Q. State your full name.

A. Joseph M. Kimberling.

Q. Where do you live, Mr. Kimberling?

A. Moscow, Idaho.

Q. And how long have you been a resident of Moscow, Idaho? A. Twenty-three years.

Q. What is your occupation or calling?

A. I am a carpenter by trade.

Q. And how long have you followed that occupation?

A. Why, most of the time for about 26 years.

Q. Will you look at Plaintiff's Exhibit 3A, and tell us whether or not you recognize—let me go a little further. This street running with the points of the compass indicated here north and south, and named Main Street, is Main Street, Moscow, and this street running in the opposite direction, east and west, is "C" Street, in Moscow. With that

(Testimony of Joseph M. Kimberling.)

information, do you recognize this portion of the map surrounded by a broad pencil mark, as including the buildings of the Leo Brothers Company vinegar plant? A. I think I do, yes, sir.

Q. Now, I want you to tell the Court how this building on the north side, that runs up to "C" Street, is connected with the building or addition here marked "Vinegar tanks," there where I am indicating.

A. Well, that is connected on Main Street, that is, the [100] street running north and south here, by a large gate, with a heavy track, that works on a track, and there is a heavy post next to the brick building and one next to the tank building, that supports this track for the heavy gate that closes the entrance.

Q. Are those posts nailed to the respective buildings?

A. Yes, sir. They seem to be properly secured there. Then on the rear there is a gate something similar to the one on the front, on the alley. Over this scale platform the roof that protects them, the end of the—the north end of the rafters rests on the main brick building or press-room, as he has it marked here. On this tank building, I would judge down about 16 inches, about that,—I never measured it,—about 16 inches from the plate line of this building, there is a timber spiked to the side of the building on to the posts and braces, and the ends of these rafters over the scale shed rests on this timber. It has been a 2x6; it isn't at the present

(Testimony of Joseph M. Kimberling.)

time; it has been burned. It is a little smaller than that now, I think. Then in the center of this shed, or about the center of it, there is one brace; there is a timber about, oh, I would say 14 inches, I would say, probably, from this one, that is spiked against the side of the building, there is about a 4x4 that rests under the rafters about 14 inches down from the top. Then there is a brace from this post, there is a 6x6 post in this shed about the center of the scale platform. This short brace runs from this post under this 4x6 or 4x4,—I guess it is a 4x4, and that is the only brace supporting that, any more than this 2x6 spiked up against the side of the building. Then on the platform, at the platform, rather, of [101] the scale, there is a timber that comes through under the scale or from the scale platform, and is fastened to this post at the bottom, or about two feet above the ground, I would judge it to be, and that is about the way those two buildings are connected.

Q. How is the scale platform connected on its north side to the building, if at all?

A. You mean to the brick building?

Q. Well, it isn't brick. It is the other addition.

A. It is marked "Press-room" here?

Q. Yes.

A. I guess that isn't brick. This scale platform runs right up and is joined to this press-room building.

Q. What is the condition of this roof? Which

(Testimony of Joseph M. Kimberling.)

way does the roof over the scale platform slope or run the water? A. It slopes to the north.

Q. From the tank shed to the press-room?

A. Yes, it runs to the north.

Q. How is the roof composition proper run together there—in a gutter, or is there a break in the composition?

A. There is a gutter, if I remember right, that empties the water off, it would be to the east.

Q. Where does the water go that runs off of the north side of the roof over the tank-shed immediately south of the room over the scales platform?

A. I don't believe I get that question.

Q. Where does the water run that falls upon the north side of the roof over the tank-shed? What kind of a roof is it on the tank-shed?

A. Well, it is what we term a gable roof, one rafter. I [102] think the south is a little bit longer than the one on the north, so it doesn't make this gable directly in the center of this building.

Q. But the water runs both ways—south and north? A. Yes, sir.

Q. Where does the water run that runs off of the building immediately south of the scales platform?

A. It falls on to this concrete driveway.

Q. Immediately south of the scales. This is south, isn't it?

A. Oh, yes. I get your question now. It runs and drops off on the south side of the shed.

Q. No, you don't understand me yet. The water that falls on the north side of the roof of the tank

(Testimony of Joseph M. Kimberling.)

building immediately south of the roof of the scale shed.

A. It runs down on to this scale roof, and then empties down into this gutter and comes off to the east.

Q. What about any sewer connection or service or sewer for the flowage of surface water out in this space south of the brick portion of the building, north of the tank-shed?

A. Well, the water that empties off of this building on to this platform, this concrete driveway, and somewhere about the center of this space,—I don't know whether it is just the center or not,—but there is a drainage, concrete trough, I would call it,—first there is a catch-basin on this concrete driveway in here somewhere, probably, I will say, 18 inches square,—it possibly is a little smaller or larger—about that—there is a catch-basin there, that the flow that runs off of these buildings or accumulates on this concrete driveway doesn't run into the sewer. It flows in this catch [103] basin and out in the sewer somewhere in the tank-shed, in a concrete trough.

Q. Then, the water falling off of the north side of the tank-shed on to the concrete in the alley, and that falling off of the south side of the brick building and the press-room, that flows on to that concrete, flows off through the tank-shed or into the tank-shed, into the sewer?

A. I judge it does, yes, sir, from the looks of the—

(Testimony of Joseph M. Kimberling.)

Mr. MOORE.—Take the witness.

Cross-examination.

(By Mr. DAVIS.)

Q. What is the space between the two buildings?

A. Well, I didn't measure it. I would judge it to be—

Q. Fifteen or sixteen feet, is that about approximately correct?

A. I would judge it to be sixteen feet.

Q. About how wide is the concrete driveway? That isn't the full width, is it? A. No, sir.

Q. And to the south, along the tank-shed, there is quite a little piece of dirt, little stretch of dirt, is there not, three or four or seven feet, between the south edge of the concrete and the tank building?

A. I believe there is a small space,—I couldn't say just how much, between this concrete and the main posts of the tank-shed.

Q. The tank-shed is open on the north except as the boards come down for a short distance from the top, and then it is all open? A. Yes, sir. [104]

Q. And the canopy over the scales is not included at all, it is just a roof over the scales?

A. That is all.

Q. And it is tied about the same on either side, so far as permanency is concerned?

A. Well, I would judge it to be, yes.

Mr. DAVIS.—I think that is all.

Q. (By the COURT.) How many stories are there to the press-room there, sir,—just one story or two or three?

(Testimony of Fred Veatch.)

A. I believe it to be only a one-story building, I believe it to be.

Mr. DAVIS.—That is all.

Mr. MOORE.—That is all, Mr. Kimberling. Mr. Veatch, will you take the stand for another question?

Mr. DAVIS.—Pardon me, Mr. Moore. You never had this marked as admitted. I know you want it in.

Mr. MOORE.—I think it is marked admitted on the inside. I intended to offer only page 4.

(Witness excused.) [105]

Testimony of Fred Veatch, for Plaintiff (Recalled).

FRED VEATCH, heretofore duly sworn as a witness in behalf of plaintiff, upon being recalled, testified as follows:

Direct Examination.

(By Mr. MOORE.)

Q. Mr. Veatch, is there any reason for not boarding up or inclosing this tank-shed on the north and the east?

A. Yes, sir. There is all kind of reasons for it.

Q. Will you name some of them?

A. Well, we have got to have quick access to that. There is three openings from the other building on the outside, but that side of the tank we have to take our hose through in there, we have to take lumber in there for making the tops. We have to change those occasionally. The acetic acid

(Testimony of Fred Veatch.)

eats the nails out of the tops about every two years, and we couldn't work in there if that north side was closed up tight.

Q. Explain why, now. What would be the result if that was closed up, with the accumulation of acetic acid in there. Is it acetic acid that accumulates there?

A. Yes, sir. It would eat the rods off of the tanks very rapidly.

Q. Could one work in there if it was all closed up?

A. Unless it was air-tight. If it was air-tight you couldn't but just an ordinary building you could.

Q. The main thing is to give a circulation there?

A. A circulation of air. Your iron hoops would go to pieces every two or three years if they were confined in there.

Q. In the process of making vinegar?

A. Yes, sir. [106]

Mr. MOORE.—That is all.

Mr. DAVIS.—That is all, Mr. Veatch.

Mr. MOORE.—That is the plaintiff's case.

(Plaintiff rested.)

Mr. DAVIS.—The plaintiff having rested, your Honor, the defendant moves the Court to enter judgment for the defendant, upon plaintiff's own case, that he is not entitled to recover. There are matters which I wish to argue in brief.

The COURT.—I think I will not entertain argu-

(Testimony of John K. Wooley.)

ment unless you are willing to stand upon the motion.

Mr. DAVIS.—All I have is just an expert here. He just stepped out in the hall. If we can wait a few minutes. Mr. Webster might take the stand and give us his testimony as to—

The COURT.—Do you want your motion disposed of now?

Mr. DAVIS.—No. The Court didn't want to hear argument. [107]

Testimony of John K. Wooley, for Defendants.

JOHN K. WOOLEY, produced as a witness in behalf of defendants, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. DAVIS.)

Q. What is your name? A. John K. Wooley.

Q. How old are you? A. Thirty-two.

Q. What is your business or profession?

A. I am deputy assistant manager of the Washington Surveying and Rating Bureau.

Q. And what is your business? Describe it.

A. We make the fire insurance rates for the State of Washington.

Q. Do you make the rates or survey?

A. We survey the property and promulgate the insurance rates.

Q. Were you employed in that capacity at any time in the State of Idaho?

(Testimony of John K. Wooley.)

A. Yes. I was surveyor for the Board of Fire Underwriters of the Pacific, with headquarters at Salt Lake, from 1908 to 1918.

Q. Did you survey the town of Moscow at any time?

A. In 1917 I rerated the town of Moscow.

Q. How long have you been in the rating business? A. Since 1908.

Q. That is a technical following?

A. In most of its respects.

Q. Now just explain to the Court briefly the operation of the rating bureau, or your Pacific Board rating bureau, and the manner in which you adopt and promulgate rates, and the manner [108] in which the companies and their agents are advised. Maybe I can shorten it by asking you first of all, what is the Pacific Board?

A. The Pacific Board is an association of fire insurance companies, for the purpose of maintaining certain rates.

Q. And the department sends out surveys and surveys the towns, and then you apply your knowledge of fire hazards to the risks as you find them?

A. Yes, sir.

Q. And arrive at an equitable rate, in your estimation, and that rate is then published by the board, and the companies who are members adopt it?

A. They are furnished with the sheets, as are also the local agents in the respective towns.

Q. Now, for example, when the city of Moscow has been surveyed and your fire hazards applied

(Testimony of John K. Wooley.)

and the rate arrived at and promulgated, the agent has the same—is furnished with the same as his principal, in San Francisco or New York, or wherever the principal happens to be, wherever the agent happens to report? A. Yes, sir.

Q. And the agent—are you sufficiently familiar to answer this question? The agent is bound by his instructions as to rates and the manner in which he writes and—

Mr. MOORE.—I want to examine him on that before he answers that question, or makes the objection that he isn't qualified.

Mr. DAVIS.—I think I will withdraw it anyway. Mr. Veatch answered it. I am just repeating here. [109]

Q. Now, in surveying the town of Moscow, did you have occasion to survey the Leo Brothers plant? A. I did.

Q. And did you compute the rate that was to be charged to that plant?

A. I made the rate in 1917.

Q. Do you know whether or not the physical aspects of the plant have been changed any?

A. So far as I know—I know the relative distance between the two buildings is the same, because my survey shows a distance of 17 feet intervening between the two risks.

Q. You looked that up recently, did you?

A. I was forwarded the survey that I made. It was sent from the Salt Lake office.

(Testimony of John K. Wooley.)

Q. Now, just briefly explain. The rate on this building is $2.50. The rate on this vinegar tank is $2.45. Here is another building, this building here. Just explain your application of the principles of insurance rating.

Mr. MOORE.—I object to that as immaterial. There is nothing to be gained by knowing what makes the hazard, or what makes the rate. If he is simply interpreting the rate book, I shall object to that because he hasn't shown himself qualified to do that. He is the man who finds the hazard and fixes the necessary rate, but so far as that rate book, made up somewhere else, is a notice to the insurance company, he hasn't qualified himself yet to say.

The COURT.—I don't know just what he is going to say to you. I will let him go along a little while.

Mr. DAVIS.—Q. Have you had experience in the home office of insurance companies? [110]

A. Not in the insurance companies. I have been in the rating bureau.

Q. And how long have you been in the rating bureau? A. Since 1908.

Q. Do you know as a matter of fact whether or not the rates as promulgated by the Board of Underwriters are furnished to the home office or the general agencies of the companies who are members, as well as to the agents?

A. They are, absolutely.

(Testimony of John K. Wooley.)

Q. And when you made your rate on the Leo Brothers factory and sent in your report, was that report printed and sent both to the companies and to the—your final analysis of that report was printed and sent both to the companies and the agents?

Mr. MOORE.—Just a moment. What department of the insurance work prints these rate books,—the insurance department or the rating bureau?

A. Well, you are mixing two organizations, I am afraid.

Mr. MOORE.—I don't want to.

A. The rate bureau is a rating bureau; it makes the rates and has them printed. Whether that happens to be a part of their own office or business or—

Mr. MOORE.—As a rating bureau, you fix and prepare the rate books? A. Yes, sir.

Mr. MOORE.—And then deliver them to the companies and the Underwriters' Board?

A. Yes.

Mr. MOORE.—That is as far as you go,—and make that delivery? A. Yes, sir. [111]

Mr. MOORE.—That is all.

A. That is as far as the office goes until the agent writes the fire insurance policy. Then the copy of the daily report has to pass through that examining department of the rating bureau for approval as to form and rate, before it can be filed on the company's permanent file.

(Testimony of John K. Wooley.)

Mr. DAVIS.—Q. Now, Mr. Wooley, just refer to Defendant's Exhibit 7, and referring also to the—this is Defendant's Exhibit No. 7, and I think Plaintiff's Exhibit 3,—and to the portion that has been marked and re-marked here, and explain what—line 2 there, the southeast "C," southeast "C," capital "C," does that refer to the southeast corner of Main and "C"?

A. It refers to the southeast corner of Main and "C," because this is the street on which it is located, Main Street, and this is the corner of the intersection, the southeast corner of Main and "C," but between "C" and "A" Streets.

Q. Just below that line "C" it says "south."

A. That means the building next south to the one on the corner.

Q. Further over here, in line 2, it says "Vinegar factory," and line 3, it says, "Vinegar tanks."

A. That is merely a description of the occupancy.

Q. Then when a daily report is described as southeast corner of Main and "C," or referring to line 2, page 3 of the rate book, does that refer to what particular portion of this risk described in Exhibit 3, does that refer to?

A. Only to the vinegar factory.

Q. And on this map what portion is the vinegar factory, as applying to that rate? [112]

A. Merely the building designated 244, as shown on Sanborn's map, located on the southeast corner.

Q. Does it not refer to the building south of it?

A. No, because that is specifically rated.

(Testimony of John K. Wooley.)

Q. Is that a matter of instructions given in your rate book?

Mr. MOORE.—That is not the best evidence.

The COURT.—Sustained.

Mr. DAVIS.—I will ask you to mark this.

Certain papers were marked as Defendant's Exhibit 18 and 19.

Q. I hand you Defendant's Exhibit No. 19 and 18, 18 and 19,—state what they are. What is 18, first?

A. No. 18 is the book of general estimates, basis rates, which is provided to the agents in the field, so that they can write a risk which may not be specifically rated, pending the authorization of a specific rate by the bureau. The ruling section determines the writing of the policy form. The book of rules in here explains how the policy form can or cannot be issued.

Q. That is in this Exhibit 18?

A. Exhibit 18. Exhibit 19 is the book in which the specific rates are promulgated after inspection by representatives of the bureau.

Q. When a specific rate has been promulgated, are the agents or companies or members of the board authorized to adopt any other rate?

A. Absolutely not. The rule is provided in the book.

Q. Read the rule that—

The COURT.—That is admitted by Mr. Veatch, is it not?

Mr. DAVIS.—Yes, I believe that is.

(Testimony of John K. Wooley.)

Q. Now, referring to the specific rates at Moscow, and your [113] rules as promulgated there, tell me whether or not, where there are two risks specifically and separately rated, such as line 2 and line 3 of this book, whether it is possible, and to conform to the rules of the company, for an agent to write both those risks under one coverage, at one rate?

A. In the first place, the book of specific rates states that the specific rates in the book applied to the different risks are subject to the rules as provided for under the other book. In the other book it states that insurance may be issued only covering a specific amount on building, a specific amount on machinery, tools and fixtures, a specific amount on stock in the building. Other than that, in order to write insurance on two or more buildings which may be specifically rated, it is necessary to adopt either the average distribution clause or the ninety per cent reduced rate average clause, which is accepted for blanket purposes in lieu of the average distribution clause.

Q. Now, in other words, the only way that you can write insurance under those conditions is by using the reduced rate average or the coinsurance clause? A. And the highest rate applicable.

Q. You have to use all three of those to make a blanket coverage, and if they are not used there could not be a blanket coverage, according to the rules?

(Testimony of John K. Wooley.)

A. There could not be a blanket coverage.

Mr. DAVIS.—That is all.

Cross-examination.

(By Mr. MOORE.)

Q. Will you turn to page 4 of that exhibit. Tell us now where the property described in that insurance policy is located. [114]

A. It says all—

Q. No. Just tell us. Show us on this map.

A. 244.

Q. Down here,—take this into consideration—where is it? A. Limited to 244.

Q. 244–D?

A. Well, that is,—for instance you call this the front portion of your main building, and this part in the rear is an addition. It would include that.

Q. Don't "D" mean south?

A. Absolutely not. That is a separate building, which has been rated as such.

Q. Here in your rate sheet No. 3 south "D" vinegar tanks.

A. Oh, no. 244 is the vinegar factory.

Q. But the next line right below it, 244–D, vinegar tank.

A. But it is not referred to here.

Q. How is it referred to down there, 244–D?

A. It isn't referred to at all.

Q. What do you call that right there, 244–D?

A. "D" stands for most anything. "D" stands for framed construction. There is no "D" on the map at all.

(Testimony of John K. Wooley.)

Q. Then the "D" don't control?

A. It has nothing to do with it, that I can see.

Q. Then the 244 controls, does it?

A. Absolutely.

Q. If this is all one building, the 244 controls the—

A. It isn't all one building.

Q. Why isn't it one building?

A. Because there is no street number on it. Your mail is [115] probably delivered all in one building.

Q. That is the only reason then—there is no post-office number on it? A. Probably so.

Q. Don't you know the postoffice department don't put the street numbers on the streets?

A. I don't know who puts it on. In referring to street numbers we refer to the numbers that are there for mail delivery or whatever they are on there for.

Q. So you had nothing to do with fixing that number there?

A. Oh, no. We took it because it was there. If we had used another number it would have been conflicting.

Mr. MOORE.—That is all.

Redirect Examination.

(By Mr. DAVIS.)

Q. You had nothing to do with making the map?

A. Absolutely not.

Q. And when you find a building that you consider a separate hazard, that you consider should

(Testimony of John K. Wooley.)

be rated separately from another building, and don't find a number on it, how do you designate it?

A. Either by "next south" or "next rear" or "next north" or "next east" or "next west."

Q. For example, away down at the lower end of this Plaintiff's Exhibit No. 7,—I see it is line 30, —it says "Aj rear."

A. That is adjoining rear. It is considered two buildings.

Q. Although it has no Sanborn map, it is considered—

The COURT.—What does the letter "D" mean?

[116] A. It means frame construction.

Q. What does "C" mean?

A. It means brick or other masonry construction, probably concrete block. There are so many different kinds of—A brick building with a shingle roof is "C" class, for instance.

The COURT.—"D" is used at the bottom of the policy there.

A. Somebody put it on there, I don't know why. It has no bearing on the description of the risk, except that it is frame building. So is the other one. The other is brick and frame, so it is probably classified as "CD," although I didn't notice. "D" merely means frame construction, which includes brick veneered, and also it is a construction inferior to masonry.

Mr. DAVIS.—That is all.

(Testimony of John K. Wooley.)

Recross-examination.

(By Mr. MOORE.)

Q. Then "D" on the policy has no effect on the description at all? A. Absolutely not.

Q. How do you number stables and barns in connection with a—

A. Either by the rear or giving it a half number, or saying "on the assured's property and located in the rear, dwellings on such and such.

Mr. MOORE.—That is all.

Mr. DAVIS.—That is all.

(Witness excused.) [117]

Testimony of Fred Veatch, for Plaintiff (Recalled in Rebuttal).

FRED VEATCH, a witness heretofore duly sworn in behalf of plaintiff, upon being recalled in rebuttal, testified as follows:

Direct Examination.

(By Mr. MOORE.)

Q. Mr. Veatch, were you present when the claim of Leo Brothers Company vs. The London, Liverpool & Globe of London, England, and the Home Insurance Company, under those policies, covering this particular vinegar, was settled and closed in the office of the Veatch Realty Company?

A. Yes, sir, I was.

Q. Do you remember as a circumstance that the purchaser of the vinegar at that time, Mr. Divan, and yourself came to my office? A. Yes, sir.

(Testimony of Fred Veatch.)

Q. Had the claim been settled and compromised or closed at that time?

A. No, sir, it had not.

Q. Do you remember as a circumstance that we went back to the office of the Veatch Realty Company? A. Yes, sir.

Q. Did you hear me make a statement to Mr. Webster that Leo Brothers Company would take 20 cents for the vinegar, providing Mr. Divan got the vinegar? A. Yes, sir, absolutely.

Q. Now, were you called upon to make supplementary proofs under the policies—how many policies did the Home have? A. Two.

Q. And the Liverpool & London & Globe Insurance Company? [118] A. Had one.

Q. Were you called upon by Mr. Webster, as adjuster for those two companies, to sign supplementary proofs? A. Yes, sir.

Q. Did he send those supplementary proofs here for you to sign? A. Yes, sir.

Q. Did you keep copies of them?

A. I had my stenographer make copies of them, yes, sir.

Q. Look at Plaintiff's Exhibit 15 and tell us whether or not that is a copy of the supplementary proof of loss that Mr. Webster asked you to sign in making that settlement?

A. Yes, sir, that is supposed to be a copy of the proof of loss.

Mr. MOORE.—I offer it in evidence.

Mr. DAVIS.—I object to it as immaterial, and

(Testimony of Fred Veatch.)

not a proper proof of loss. Mr. Webster said that on all these the word "compromise" was written. It certainly isn't proper rebuttal.

The COURT.—They may go in.

Mr. MOORE.—Q. Look at Plaintiff's Exhibit 16 and Exhibit 17, and tell us whether or not those two exhibits are copies of the supplemental proofs of loss that Mr. Webster submitted to you for your signature, in the settlement of the claim under the Home policies?

A. Yes, sir, I suppose they are copies of the—

Mr. MOORE.—I offer these in evidence also.

Mr. DAVIS.—I object that they are immaterial, your Honor, and they haven't accounted for the absence of the original. [119]

Mr. MOORE.—Q. Mr. Veatch, have you any invoices showing the prices of vinegar here in Moscow and its immediate vicinity, preceding and shortly following the 6th day of July, 1921?

A. I have my office copies, carbon copies of the invoices.

Q. That shows the prices of the vinegar that you were selling it at? A. Yes, sir.

Q. Prices vinegar was selling at—will you produce them?

(Witness produced papers.)

Mr. MOORE.—Maybe I had better have them marked for identification.

Q. What are the papers, Mr. Veatch, that you have just handed me?

(Testimony of Fred Veatch.)

A. They are copies of invoices of vinegar which we shipped, around near the 6th of July.

Mr. MOORE.—Will you fasten those all together and mark them for identification.

Said copies of invoices were fastened together and marked as Plaintiff's Ex. 20.

Q. Will you look at Plaintiff's Exhibit 20 for identification, and tell us what periods of time those invoices cover?

Mr. DAVIS.—It isn't proper rebuttal, your Honor.

The COURT.—Yes, I think so. Overruled. I suppose they are offered to rebut the testimony of Mr. Riley.

Mr. MOORE.—Yes, sir.

A. They are for a period of time running from about June 16th, June 17th, June 22d, June 24th, June 29th, July 1st, July 15th, July 16th, July the 15th, July 16th, and July the first. I have got another one there. [120]

Mr. MOORE.—We offer them in evidence, to be marked the proper exhibit.

The COURT.—Were those invoices of current sales or of preceding contracts?

A. Current sales, Judge. I would say that in the spring of 1921, it was practically, on account of financial conditions, practically impossible to make future contracts.

The COURT.—What I mean, the sales were made at about the time of these invoices?

(Testimony of Fred Veatch.)

A. Yes, sir. Just the orders were put in just at the time the invoices were made.

Mr. DAVIS.—I have no objection.

Mr. MOORE.—I am going to ask the witness to read these invoices and explain them.

The COURT.—You want just the price? Give the amount, date and price.

WITNESS.—Not to whom, not to where they went?

The COURT.—No, I don't think that is necessary, that is, if the sale was made on board the cars here.

WITNESS.—Yes, sir; this is all f. o. b. Moscow. This included cooperage, Judge, which that year run from six cents a gallon on second cooperage, and seven cents a gallon for new cooperage. Most of this was second-hand cooperage. I could pretty near pick it out as I went through if it made any difference. But here is two barrels that went to Kahlotus, Washington, on the order of the National Grocery Company, of Seattle, at 23 cents a gallon, f. o. b. Moscow.

The COURT.—What day?

A. That was July 1st. On July 15th, an invoice to the Lewiston Mercantile Company, which went to Genessee, Winona, [121] St. Johns, Hoy, Washington, Lenore, Idaho, Juliaetta, Idaho, Culdesac, Idaho, Grangeville, Idaho, at 23 cents.

Q. Just a moment before you proceed further. What grain or what percentage of acidity was this?

A. This was all 40 grain vinegar.

(Testimony of Fred Veatch.)

Q. Or four per cent acidity?

A. Yes. Or here is one exception,—I think possibly two exceptions. On July 18th, a shipment for the Lewiston Mercantile Company, to Leland, to Nez Perce, and one to a—no, that was bottled goods, —at 23 cents. On July 13th, I think that is, 15 barrels of 60 grain vinegar, shipped to Spokane, Washington, to the Inland Products Company, at 24 cents, f. o. b. Moscow. Then we are charged there with 15 new barrels, at three-fifty apiece. On July 1st a shipment for the Lewiston Mercantile Company, to Uniontown, Washington, to Genessee, Idaho, Winchester, Idaho, Troy, Idaho, Cottonwood, Idaho, and Grangeville, Idaho, at 23 cents. There are some 45. The first three barrels in that was 45; that went at 25 cents. On June 29th, some more 45 went to Colfax, and Palouse, Washington, Leland, Idaho, Pomeroy, Washington, Grangeville and Rubens, Idaho, for the Lewiston Mercantile Company, at 23 cents. On June 24th, 12 barrels of 60 grain vinegar to the Inland Products Company at Spokane, barrels furnished by the purchaser, at 24 cents for the naked juice.

Q. You say that shipment was to Spokane?

A. To Spokane. There is two shipments in there. And another shipment to Spokane on June 17th, to the Inland Products Company, 12 barrels of 60 grain, Leo brand, at 24 cents for the naked juice, barrels furnished by the buyer. Then on June 16th, there was stuff shipped in Moscow,

(Testimony of Fred Veatch.)

Idaho, [122] Colton, Grangeville, at 23 cents, 40 grain.

Mr. MOORE.—That is all.

Cross-examination.

(By Mr. DAVIS.)

Q. These were all retail sales?

A. Yes, sir. We hadn't started to shipping any carload stuff.

Mr. MOORE.—Does this indicate—

A. Gallons.

Mr. MOORE.—Where is your grade indicated,—40 gr.? A. Yes.

Mr. MOORE.—The grain,—you say there is two cents different for each half per cent acidity?

A. Yes, sir.

Mr. MOORE.—Really ten cents difference between 40 grain and 65? A. Yes.

Mr. DAVIS.—On this third sheet there is one, two, three, four sheets, I notice you have a shipment to the Inland Products Company, Spokane, Washington, July 18, 13, 767 gallons, 15 barrels 60 grain Leo, price 24 cents. A. Yes, sir.

Q. That is—

A. I wish to say in that connection that I have shipped them a good deal of 60 grain vinegar to keep up their generators up to strength, and I make them a special price.

Q. Better than the average retail price?

A. Yes, sir.

Mr. DAVIS.—I think that is all, Mr. Veatch.

Mr. MOORE.—That is all. That is our case. [123]

Mr. DAVIS.—The defendant rests, your Honor.

I am not quite familiar with the practice where the case is tried without a jury, but the defendant asks the Court to make findings in favor of the defendant, special findings, finding facts in favor of the defendant, and asks leave to present proposed findings. But at no time thereafter did the defendants request or suggest findings, either in their briefs, or petition for rehearing, or otherwise, nor did they ever present a desired or proposed finding upon any point or issue or remind the Court of the foregoing suggestion made in the course of the trial.

The COURT.—Do you desire to argue the matter now, Gentlemen?

Mr. MOORE.—Why, I can briefly state our position. We haven't the authorities here. I haven't any brief formulated. I can get the authorities perhaps collated in a day or so. I wouldn't like to be limited at this time to this presentation. I don't think there is much of a question of fact here for the Court to determine.

(Further argument by Mr. Moore, Mr. Davis, Mr. Moore and Mr. Davis, respectively.)

The COURT.—I shall be assisted by cases closely in point, if any such there be, as to the facts. I am very sure that the mere physical connection of the buildings is not a controlling—it is a material consideration, of course, but not a controlling one, because you would not contend that the policies

number 240 would carry the building on the corner. It is well known that the same buildings are often put up in sections and different policies are carried on different sections of the building. It is all one structure physically, and of course that is always a consideration. But I shall have to consider this in the light of all the circumstances, and it seems to me it may be rather a perplexing question when we get into it, just what the agreement was. [124]

The Court thereupon took the consideration of the law and facts of said causes under advisement and thereafter, after briefs filed by counsel for both parties, rendered an opinion in writing in which the Court concluded that judgment should be entered for plaintiff against both defendants, and thereafter upon request of defendants further considered said cause and thereafter on the 19th day of September, 1922, rendered further opinion in writing in favor of plaintiff, and on said date signed and caused to be entered judgment for plaintiff in said cause. Defendants thereafter and on the 7th day of October, 1922, presented its exceptions to said decision and the entry of said judgment on the grounds that there was no evidence to support said decision or judgment.

Now, in furtherance of justice and that right may be done, defendant presents the foregoing as its bill of exceptions in this cause and prays that the same may be allowed, signed and certified by the Judge as provided by law and filed as a bill of exceptions herein, and that the exhibits, index of which is hereafter attached, be made part thereof

and that the Clerk of the court be ordered and instructed to attach said exhibits to said bill of exceptions.

E. EUGENE DAVIS,
Spokane, Washington,
ORLAND & LEE,
Moscow, Idaho,
Attorneys for Defendants. [125]

Certificate of Settlement of Bill of Exceptions.

It appearing to the Court that the foregoing bill of exceptions contains all the material facts occurring in the trial of said causes, including the rulings of the Court, together with the exceptions thereto taken and allowed and all material matters and things occurring upon said trial, except the exhibits introduced in evidence which are hereby made a part of the bill of exceptions, and the clerk of this court is hereby ordered to attach said exhibits thereto.

NOW, THEREFORE, upon motion of defendants' attorneys, it is HEREBY ORDERED that said proposed bill of exceptions with the amendments allowed by this Court be and the same is hereby settled as a true bill of exceptions in said causes and the same is hereby certified accordingly by the undersigned, Judge of this court who presided at the trial of said causes, as a true, full and correct bill of exceptions, and the clerk of this court is hereby ordered to file the same as a record in said causes and in due time transmit the same to the Honorable Circuit Court of Appeals for the Ninth Circuit.

October 21, 1922.

FRANK S. DIETRICH,
District Judge.

[Endorsed]: Lodged Oct. 23, 1922. Filed Oct. 27, 1922. W. D. McReynolds, Clerk. [126]

In the District Court of the United States for the District of Idaho, Central Division.

LEO BROTHERS COMPANY, a Corporation,
Plaintiff,

vs.

THE NEW BRUNSWICK FIRE INSURANCE COMPANY, a Corporation,
Defendant,

and

LEO BROTHERS COMPANY, a Corporation,
Plaintiff,

vs.

NORWICH UNION FIRE INSURANCE SOCIETY, LIMITED, a Corporation,
Defendant.

Opinion.

August 17th, 1922.

FRANK L. MOORE, Attorney for Plaintiff.

ORLAND & LEE, E. EUGENE DAVIS, Attorneys for Defendants.

DIETRICH, District Judge.

The real issue in these cases appears to be one of

fact rather than of law. Legal rules and principles, of course, are to be applied, but touching these there is little room for controversy. In the main elementary they pertain largely to the construction of contracts, and such questions as they incidentally present relate not to their definition and scope but to their application to the facts. It is hardly necessary to say that if a contract is plain and specific there is no need for construction, and hence the surrounding circumstances are immaterial. If upon the other hand, [127] it is indefinite or ambiguous or incomplete, such circumstances may be resorted to for light upon the unexpressed intent of the parties. And a contemporaneous construction joined in by the parties will control the scope and meaning of an instrument.

The loss claimed in each of the two suits is for vinegar or vinegar stock injured by fire while in the tanks of the plaintiff in its tank-shed, in block 102, on the east side of Main Street, Moscow, Idaho, between "A" and "C" Streets; and the question is whether by their descriptive clauses the policies reached to this shed. Consideration of the question is complicated by the fact that in executing and delivering the policies one Fred Veatch acted for both parties. That is, the New Brunswick policy he signed in person, as the agent of the insurance company, and in the other case the signing agent was Veatch Realty Company, of which he was the manager. At the same time he was the owner of most of the stock in and was the active manager of the plaintiff company. Neither

party repudiates the contracts upon this account, but as will appear in the course of the discussion, the fact is not without an indirect bearing upon the point at issue.

The New Brunswick policy is for $6000.00, and bears date July, 28, 1920. The Norwich is for $5000.00, and is dated December 21st, 1920. Immaterial phraseology omitted, and with certain transpositions for the sake of brevity, the coverage of the former can be stated as follows:

> "On merchandise of every description consisting principally of cider vinegar, manufactured or in process of manufacture, and on materials" etc.; "all only while contained in the three story comp. roof, brick & one story frame building and its additions (if any) of like construction, communicating and in contact therewith," "situate No. 244 on the southeast corner of Main and 'C' Streets, in Moscow, Idaho."

At the bottom of the policy, after the date line, and to the left of the signature of the insurer's agent are the following notations, under the printed heading "Insurance Map": "Sheet 4, [128] Block 102, No. 244—(D)," the words "sheet," "block" and "No." being printed. The "D" after 244 is apparently a clerical error, and is without significance.

The coverage in the other policy is not substantially different. Instead of the word "cider vinegar" it describes the property as "vinegar and vinegar stock"; the words "one story" before

"frame" are omitted, and the situation of the property is given as "at No. 244 on the east side of Main Street between "A" and "C" Streets in Moscow, Idaho." The notations on the bottom are the same, except that the letter "D," already referred to, is not added to the figures 244.

It being conceded by all parties that the descriptions are in substance the same, no comment upon the differences in phraseology is necessary. It is further conceded that the calls "block 102, Main Street, 'A' Street, and 'C' Street" refer to the Moscow townsite plat, and that 244 has reference to a standard insurance map of Moscow, known as the "Sanborn Map," copy of which was in Veatch's hands as insurance agent, and which was commonly used as the basis for writing insurance, making rate sheets, and for reports and communications between the various insurance companies and their agents.

Upon the city plat, block 102 is bounded on the north by "C" Street, on the south by "A" Street (there being no "B" Street) and on the west by Main Street. In the northwest corner of this block was the plaintiff's vinegar factory, adjacent to "C" Street and fronting on Main. What may be denominated the main building, consisting of a brick unit and various frame units integrally connected, fully covered a rectangular section of the block along "C" Street, extending in length from Main on the front back to an alley running north and south through the block. To the south of this and toward the rear was a small scale-shed, reached by

a driveway from Main Street between the principal structure and the tank-shed. Then the tank-shed, rectangular in shape, abutting on Main Street and in length extending about four-fifths [129] of the distance back to the alley, the rear end being on a line with the rear of the scale-shed. The scale-shed formed the link by which structurally the tank-shed and main building were connected; a gate along the Main Street front also made a slight physical connection between the two structures at that point. All parts of the structure were undoubtedly used by the plaintiff as a single plant for the manufacture, storage, and sale of its vinegar products. Other than the driveway, which was closed by a gate, there was but one entrance to the building and that was into the factory proper from Main Street.

Upon this statement of the facts and nothing else, admittedly there would be little, if any, room for doubt that the coverage of the policies extended to the vinegar in the tank-shed, as well as to the vinegar in the main structure. The shed was a part of the plant, and if not an integral part of the main building still was in a very real sense an addition thereto, "of like construction, communicating and in contact therewith."

But there are certain other features of the case which, when considered in the light of the dual agency exercised by Veatch in the issuance of the policies, the defendants contend should be taken as implying an understanding by the parties or a construction of the policies by them, limiting the cover-

age thereof to vinegar contained in the main building. As has already been observed, the descriptive words "No. 244" in both policies refer to the Sanborn insurance map, with which, of course, Veatch was familiar. The notation at the bottom "Sheet 4," was doubtless intended as a reference to the current folio of these maps, turning to which we find on sheet 4 an insurance diagram of block 102, as well as of other property in Moscow. And in the space representing Main Street, opposite the plaintiff's main building, and near the front line thereof, are the figures 244. There is no corresponding number in front of the tank-sheds, and further south, opposite the livery-stable on the same block, we find the next number 224. Obviously these circumstances are in themselves [130] of little significance. The fact that on the map the descriptive number contained in the policies is not opposite all parts of the connecting structures constituting a single manufacturing plant, or is at one point on the map rather than another, does not import an intent to have the contract extend only to a part of the plant. So that if we were to confine our consideration of coverage to the descriptive clauses of the policies, including, of course, plats and maps referred to therein, the defendants would still have but little footing for their defense.

But to give significance to the fact that 244 is opposite the main building and not the tank shed, they divert attention to other circumstances, and to these we may now briefly refer. Under the general practice prevailing in insurance circles, upon writ-

ing these policies it became Veatch's duty to report the fact to the companies concerned, upon standard printed forms provided for that purpose, called daily reports. Standard forms of policies having been used, upon receiving such reports the home offices or general agent of the companies could with the data thus furnished readily construct a copy of the policy as written, and if it did not conform to the general rules, or was erroneous in any respect, they could intelligently direct correction or make cancellation. Daily reports were sent in by Veatch, and upon their face it was shown, in accordance with the fact, that the rate upon which the insurance was written was 2.50 per hundred. But it appears that at that time, upon a printed rate sheet prepared by the Underwriters Association and in the hands of all insurance agents, including Veatch, there were separate rates for the vinegar factory proper and the tank-sheds. The printed sheet (about 4x6″) upon which this rating is found, is entitled "correction sheet No. 35, April 1st, 1920, Main Street—East Side—Moscow—P—3″, and, in so far as pertinent, is as follows: [131]

No. of Rating	Location	Class	Occupation	Bldg.	Conts.	Rating Takes Effect
1	C and A Streets—Block 102					
2	SE c C (244)	C–D	Vinegar Factory	250	250	
3	South	D	Vinegar Tanks	245	245	10–15–19
4	South (244)	D	*Warehouse	340	340	4–1–20

It will thus be noted that the policies were written upon the rate prescribed for the factory proper, and not that of the tank-shed. In his report of the

Norwich policy, in the blanks left for that purpose Veatch specified, by appropriate entries, page and line of the rate sheet, the same being line two as above set out. On the New Brunswick report no entries were made in the blanks. It further appears that upon the Sanborn map in his possession Veatch had made a lead pencil notation "No. 240," opposite the tank-shed, and had taken out policies containing this number as a part of the description, such policies admittedly being limited in their coverage to this structure and its contents. The rate in such policies was 2.45, as called for by line three of the rate-book. There is nothing to show, however, that prior to the fire, by which the loss here in question was occasioned, either of the defendants had knowledge that such notation was on Veatch's map, or that he had written the policies referred to as covering the tank-shed alone. While, therefore, these circumstances may be taken as possibly shedding light upon Veatch's intent, they could have had no influence upon the defendants in acquiescing in the policies and thus accepting them, upon the coming in of Veatch's daily reports. By these reports, as already suggested, the home offices of the defendants were in effect given copies of the policies as written, and hence the information upon which they acted was such as was disclosed in the policies, their copy of the Sanborn map, possibly the townsite plat, the rate sheets, with reference to which they necessarily assumed the policies were written, and the current book of insurance rules in their hands and in the hands of all their agents, in

conformity with which rules they also had [132] the right to assume Veatch had written the policies. With this information and in the light of all the facts and circumstances, upon what basis probably, did the minds of the parties meet? It is, of course, not a question of reforming the policies but of putting upon them the construction which the parties themselves put upon them at the time, and it is to be conceded the case is different from one where the insured and the insurer have dealt with each other at arms' length. In the ordinary case where the property owner seeks insurance at an insurance agency, there are no surrounding circumstances to throw light upon the meaning of the contract and no opportunity for contemporaneous construction by the parties. The policy is issued by the company and its agent, and under elementary rules if there is an ambiguity it is construed favorably to the insured. But here Veatch while agent of the defendants was not only agent for, but in a sense was the insured; he had a large financial interest in it. Under such circumstances it may be doubted whether the policies became effective until they were reported to and approved by other agencies of the defendants. They were so reported and impliedly approved. But such approval was upon the information given by Veatch in his daily reports, and by reason of his relation to and interest in the insured, his familiarity with insurance practices, and his possession of insurance maps, rules and rate sheets, it is thought the plaintiff is bound by the construction he put upon the coverage features of

the policies, provided, of course, the defendants accepted and acted upon such construction. And from the conduct of the parties and all of the facts and surrounding circumstances, we are to determine what such construction was.

As has already been observed, taken literally the language of the policies, when applied to the physical facts concerning which there can be no controversy, clearly covers the loss. The vinegar stock was in a structure communicating and physically in contact with the building which was admittedly covered by the policy, and the two units, belonging to the same owner, were thus [133] parts of a single structure, and were used together in carrying on a single business. While some of the circumstances thus far referred to as being relied upon by the defendants to establish the intent of Veatch, and the understanding of the defendants that the coverage was limited to the main structure, may be regarded as pointing to such a construction, taken as a whole they are not thought to be conclusive or sufficient to warrant us in so limiting the natural import of the language of the policies having directly to do with coverage. The fact that certain policies were carried upon the contents of the tank-shed alone, and that for convenience in writing and handling these policies Veatch assigned to the tank-shed an arbitrary number, falls short of proving that the owner could not or under other circumstances would not take out blanket insurance on the entire plant; whatever the facts may be the explanation given by Veatch of the reasons for using

the number 240 are not wanting in plausibility. And the rate charged on the policies in controversy, together with the reference in one of the daily reports to the rate sheet, while suggestive of the main building alone, does not necessarily signify an intent to exclude the tank-shed, unless, under the rules, that rate is applicable only to the main building and should not be used in a coverage of the entire plant. And that brings us to a very serious, if not the controlling, consideration. At the hearing I understood it to be the defendant's contention that the rules expressly forbade the general coverage here contended for by the plaintiff under a single rate; in the briefs the position does not seem to be so confidently maintained. Rule 20–(A) prohibits "a blanket policy, covering under one sum separate or distinct risks or items of hazard." But for the defendants to invoke this provision is only to beg the question. Physically, at least, the vinegar and vinegar stock was not necessarily made up of distinct lots or items. In the course of manufacture and putting its product upon the market, it was necessary for the plaintiff from time to time, more or less continuously, to move the vinegar stock or [134] vinegar from one part of the plant to another, and the whole stock might very well be considered an entirety. Immediately following the rule under consideration there are stated concrete examples which would seem to make it clear that the prohibition does not, in spirit, apply to a case of this character. It is there said that a single policy may cover under one sum merchandise contained in

warehouses, elevators, canneries, packing-houses and wineries, and on their adjoining platforms or in cars alongside or within three hundred feet thereof.

Furthermore, there are found among defendants tariff rules the following:

NO. 3 BRICK AND FRAME BUILDINGS.

When insuring a B or C class building, which has a frame addition (below the roof) specify a separate amount on such addition and its contents; charging on the B or C class portion and contents, the proper B or C class rate. Such frame addition (when occupied by the same person or firm) need not be considered as an exposure to the main building according to the "Tables of Exposure." Unless such specifications are made, charge the D class rate on the whole risk.

NO. 5 FRAME BUILDINGS WITH COMPARTMENTS.

Each compartment for occupancy on the ground floor, of a D class building having more than one such compartment shall be rated as a separate building, if provided with a separate entrance from the street. A D class building, however, having two or more such ground floor compartments may be insured in a single sum, at the rate of the highest rated compartment of such building. This highest rate shall also be the rate for all the contents contained in two or more compartments of the building above the ground floor, when such contents are insured in a single sum. A lumber, wood or coal yard

shall be classed as a D class building, and all the rules applying to a D class building apply also to a lumber, wood or coal yard.

Under these provisions it would seem to be entirely practicable and proper to insure under one sum a plant or structure having several structural units or compartments, provided the highest rate fixed for any one of the units is charged; and that is precisely what was done in this case.

To recapitulate, by reason of its connection in structure and use with the main building, the tank-shed is covered by the descriptive terms of the policy. Under the practice and rules of the defendant companies it was possible to insure the main [135] building and tank-shed separately or they could be covered under one sum in a single policy. Some of Veatch's acts, it must be conceded, are equivocal, but none is incapable of reconcilement with the theory of blanket coverage. As to the defendant companies there is no direct evidence of their intent, and while possibly they may have accepted the policies with the understanding of restricted coverage, we would scarcely be warranted in indulging such a presumption. The case being in that posture we must give effect to the letter of the contracts, which, as we have seen, clearly extends to the contents of the tank-shed. And if we have correctly construed the defendants' insurance rules, the conclusion would not seem to be harsh or result in injustice to them, for in that view, if the policies had been written and reported with a coverage expressly including all of plaintiff's vinegar

stock in both the main building and the tank-shed, presumably they would have been approved as a matter of course. The premium paid being upon the highest rate fixed for any unit or compartment, a single coverage was ruleable, and there is no apparent reason why approval would have been withheld.

The pleadings present an issue touching the amount of the loss, and there was some evidence upon the point; it has been but little discussed and I shall not undertake to review the testimony in detail. The plaintiff's testimony was to the effect that there was in the tank-shed at the time of the fire 129,650 gallons of vinegar, and there is no evidence to the contrary. Upon the conflicting testimony as to market price, I am inclined to think 20 cents a gallon a fair estimate. Upon that basis the gross value of the vinegar in stock was $25,930.00. It was not destroyed but only injured by the fire and the conceded salvage was $6369.00 leaving a net loss of $19,561.00. (As a coincidence, I have found after making the foregoing computation and referring to some notes made at the trial, that this is the basis upon which plaintiff made settlement with other companies.) There was co-insurance of $20,000.00 or an aggregate of $31,000.00 altogether. Making [136] the necessary computation, we find that the Norwich share of the loss is $3,155.00 and the New Brunswick $3,786.00. Accordingly judgments will be given for said amounts together with interest thereon at the rate of seven

per cent per annum from October 29, 1921, to the date of the judgment. Costs to plaintiff.

Let judgments be prepared by counsel for plaintiff.

U. S. District Court, District of Idaho. Filed Aug. 18, 1922. W. D. McReynolds, Clerk. [137]

In the District Court of the United States for the District of Idaho, Central Division.

Nos. 784 and 785.

LEO BROTHERS COMPANY, a Corporation,
Plaintiff,

vs.

THE NEW BRUNSWICK FIRE INSURANCE COMPANY, a Corporation,
Defendant,

and

LEO BROTHERS COMPANY, a Corporation,
Plaintiff,

vs.

NORWICH UNION FIRE INSURANCE SOCIETY, LIMITED, a Corporation,
Defendant.

Motion to Suspend Entry of Judgment and for Rehearing.

Come now defendants and move the Court to withhold and suspend the signing and entry of judg-

ment herein, and to grant defendants a rehearing herein.

Dated this 31st day of August, 1922.

ORLAND & LEE,
Moscow, Idaho.
E. EUGENE DAVIS,
Spokane, Wn.,
Attorneys for Defendants

U. S. District Court, District of Idaho. Filed Aug. 31, 1922. W. D. McReynolds, Clerk. [138]

In the District Court of the United States for the District of Idaho, Central Division.

LEO BROTHERS COMPANY, a Corporation,
Plaintiff,

vs.

THE NEW BRUNSWICK FIRE INSURANCE COMPANY, a Corporation,
Defendant,

and

LEO BROTHERS COMPANY, a Corporation,
Plaintiff,

vs.

NORWICH UNION FIRE INSURANCE SOCIETY, LIMITED, a Corporation,
Defendant.

Memorandum upon Defendants' Motion for Rehearing.

Sept. 19, 1922.

FRANK L. MOORE, Attorney for Plaintiff.

ORLAND & LEE and E. EUGENE DAVIS, Attorneys for Defendants.

DIETRICH, District Judge:

Without fully considering whether or not such a motion as the defendants here present is permissible under the practice prevailing where a jury trial has been waived, I entertain the motion and dispose of it upon its merits. To refresh my recollection of the testimony, I have again gone over the record, but I find in it no substantial reason for changing the conclusions heretofore reached. The first contention urged is based upon the assumption that the number 244 refers exclusively to the factory proper, and excludes the tank-sheds. But such an assumption begs the question. If it were not for Veatch's [139] relation to the parties and his conduct with respect to other transactions as well as those here involved, the record would leave no question that the number covers the entire plant, including the tank-sheds. No other number was carried on the accredited insurance plat, and if, as we have found, the tank-sheds were physically connected with the factory proper and the whole constituted a single plant, there would be no more reason for excluding from the coverage of number 244 the tank-sheds than some

other unit of the plant. In other words, if the defendants had been advised that the coverage of policies written in their name was number 244, at the corner of Main Street and C Street, their natural conclusion would have been that it covered the entire plant, including the tank-sheds. The doubt injected into the cases arises not out of facts known to the defendant companies, but because of the use by Veatch, in writing some other policies, of another number to identify the vinegar-tanks—a number, however, not upon the Sanborn map and unknown to the defendants.

The other principal contention is that the rules quoted in the original decision from the defendants' Exhibit 18, are applicable only in cases where there has not been a specific rating of the property. Apart from the testimony of the witness Wooley, called by the defendants, there is no basis of fact in the record for this contention, and it is not competent for a subordinate agent of a litigant to define the purpose and scope of a book of rules apparently of general application. If the defendants had so limited the use of these rules, there should be some record of such action; the insured cannot be bound by a mere opinion given at the trial as to the scope of the rules. And in reason there would seem to be little basis for such an attempted limitation. If under these rules local agents have the authority to write a blanket policy, in what manner and why are they divested of that authority after specific ratings have been made by an agent especially appointed for the

purpose? [140] If such a policy is not objectionable before the special ratings, I am unable to see why it should be outlawed afterwards. The actual conditions remain the same, and the risk or risks continue to be the same, and hence, if there is any substantial reason why the underwriters would decline to accept a blanket policy upon such a risk, it is strange that they would authorize local agents to make the blanket rating but would not authorize specially assigned agents to make it. The discussion need not be prolonged. If, before these policies were written, the question had been put, whether, under the rules as printed and the other data in the record, it would be proper to write them with the blanket coverage contended for by the plaintiff, I would have had no hesitation in answering the question in the affirmative. The mere fact that the witness Veatch was not able when upon the witness-stand to point out under just what provisions of the rules the policies were permissible, is not conclusive. He seemed to be quite positive that such policies could be written.

Upon kindred points I am not at all sure that I can clarify or add to the statement of my views contained in the original opinion. Counsel reiterate the statement that two distinct risks cannot be carried under the same coverage. The proposition may be conceded. But the inference which is drawn from it is based upon an assumption that there were here two distinct risks. As we have seen, from a physical standpoint, the whole vinegar plant was an entirety, a single structure, and

it was owned by a single owner and used for a single purpose. Inherently, therefore, it was in its form and attributes a single risk, just as clearly as the structures referred to in number five of the printed rules set forth in full in the original opinion. The entire plant had but a single entrance, and upon the official insurance plat it was designated by a single number. True, the parties might, by mutual agreement, divide the entire plant up and carry the different portions as distinct risks. Hence the question as treated in the original opinion still is, [141] whether there was such a mutual agreement. While the conduct of Veatch may in some respects be regarded as equivocal, and while upon the whole the question may not be entirely free from doubt, I have given the entire record full consideration, and I find no reason for altering the conclusion stated in the original opinion. The motion will therefore be denied.

U. S. District Court, District of Idaho. Filed Sep. 19, 1922. W. D. McReynolds, Clerk. [142]

(Title of Court and Cause.)

784.

Judgment.

This cause came on regularly for trial on the 19th day of May, A. D. 1922, and the plaintiff appearing by Frank L. Moore, its counsel of record, and the defendant appearing by its counsel of record, E.

Eugene Davis, Esq., and Orland & Lee, and a trial by a jury having been expressly waived by the respective parties by written stipulation filed with the clerk of the above-entitled court, the cause was tried before the Court sitting without a jury; whereupon witnesses on the part of plaintiff and defendant was duly sworn and examined and documentary evidence was introduced by the respective parties, and the evidence being closed, the cause was submitted to the Court for consideration and decision, and after due deliberation thereon, the Court files its findings and decision in writing, and orders that judgment be entered herein in accordance therewith in favor of the plaintiff.

WHEREFORE, by reason of the law and the findings aforesaid, it is ordered, adjudged and decreed that the plaintiff, Leo Brothers Company, a corporation, do have and recover of and from the defendant, Norwich Union Fire Insurance Society, Limited, a corporation, the sum of Three Thousand Three Hundred Fifty-one Dollars ($3351.00), and for plaintiff's costs and disbursements herein expended, taxed at $20.55.

Dated this 19th day of September, 1922.

FRANK S. DIETRICH,
Judge.

[Endorsed]: Filed Sept. 19, 1922. W. D. McReynolds, Clerk. [143]

In the District Court of the United States for the District of Idaho, Central Division.

No. 784.

LEO BROTHERS COMPANY, a Corporation,
Plaintiff,

vs.

NORWICH UNION FIRE INSURANCE SOCIETY, LTD., OF NORWICH AND LONDON, ENGLAND, a Corporation,
Defendant.

Exceptions of Defendant.

Comes now defendant and excepts to the decision of the Court in the entry of judgment herein, for the reason that there is no evidence to support said decision and judgment and said decision and judgment are against the law and the facts in the case.

Defendant further excepts to the Court's failure and refusal to make findings and enter judgment for defendant herein.

E. EUGENE DAVIS,
Spokane, Washington.
ORLAND & LEE,
Moscow, Idaho.
Attorneys for Defendant.

Service of the foregoing admitted this 9th day of October, 1922.

FRANK L. MOORE,
Attorney for Plaintiff.

U. S. District Court, District of Idaho. Filed Oct. 16, 1922. W. D. McReynolds, Clerk. [144]

In the District Court of the United States, Central Division, District of Idaho.

No. 784.

LEO BROTHERS COMPANY, a Corporation,
Plaintiff,

vs.

NORWICH UNION FIRE INSURANCE SOCIETY, LIMITED, OF NORWICH AND LONDON, ENGLAND, a Corporation,
Defendant.

Petition for New Trial.

Comes now defendant and petitions the Court to vacate judgment herein and grant defendant a new trial, upon the following grounds:

I.

Insufficiency of the evidence to justify a decision and judgment and that said decision and judgment are against law.

II.

Error in law occurring at the trial.

This application is made upon the pleadings herein consisting of plaintiff's complaint and defendant's answer and the judgment herein, and upon the minutes of the Court which shall include the clerk's minutes and any notes and memorandum which may have been kept by the Judge

and also reporter's transcript of his shorthand notes of the evidence introduced.

Defendant specifies the following particulars wherein the evidence is insufficient to justify the decision or sustain the judgment:

(a) The evidence is insufficient and there is no evidence to establish in any manner, or tend to establish any liability on the part of the defendant, as insurer, for the loss of the property in question.

(b) The evidence is insufficient and there is no evidence to establish any contract of insurance with defendant covering the property destroyed by fire. [145]

(c) The evidence is insufficient and there is no evidence to sustain a decision that the property destroyed by fire was included within the description of the property insured by the contract in question.

(d) The evidence is insufficient and there is no evidence to establish, or tend to establish, the fact that the property destroyed by fire was located, situated or contained in the building described in said contract of insurance as located at #244 on the east side of Main Street between A and C Streets in Moscow, Idaho.

(e) The evidence is insufficient and there is no evidence to establish, or tend to establish, the fact that the property destroyed by fire was located, situated or contained in the building described in said contract of insurance as located in Block 102, #244 Sanborn's fire map of Moscow, Idaho.

(f) The evidence is insufficient and there is no evidence to establish the fact that the property destroyed by fire was the property agreed to be insured by the contract of the parties.

(g) The evidence is insufficient and there is no evidence to establish, or tend to establish, the fact that the property destroyed by fire was situated or located in any building agreed upon between the parties as the building wherein the insured property was to be located.

(h) The evidence is insufficient and there is no evidence to establish, or tend to establish, the fact that on account of the destruction of any property belonging to plaintiff this defendant became, or is liable to, or is owing plaintiff the sum of $3351.00, or any other sum.

(i) The evidence is insufficient and there is no evidence to establish, or tend to establish, that defendant agreed to insure any property located or contained in the building used as storage for vinegar-tanks and their contents. [146]

(j) The evidence is insufficient and there is no evidence or disputed questions of fact upon which the finding or decision can be based to establish, or tend to establish, that defendant ever entered into any contract of insurance with plaintiff to insure it against the loss of the property destroyed.

(k) The evidence is insufficient to justify the decision and judgment in that the evidence shows without dispute, that the parties to the contract of insurance agreed that the building referred to as

the factory proper and the building referred to as the vinegar tank-sheds were two separate and distinct risks and two separate and distinct subjects of insurance.

(l) The decision and judgment is against law in that there is no fact or inference therefrom to support the finding that the property destroyed by fire was included within any contract of insurance entered into between plaintiff and defendant.

Defendant specifies the following particular errors of law relied upon:

The Court erred in construing the agreement of the parties as a contract for the insurance of the contents of the building referred to as the vinegar tank-shed.

The Court erred in denying defendant's motion for judgment at the close of plaintiff's case.

The Court erred in refusing to make findings in favor of defendant as requested at the close of the entire case.

The Court erred in deciding the issues in favor of plaintiff.

The Court erred in entering judgment in favor of plaintiff.

E. EUGENE DAVIS,
Spokane, Washington,
WM. E. LEE,
Moscow, Idaho,
Attorneys for Defendant.

Due and legal service of the foregoing petition for new trial, by receipt of true copy, admitted this 10th day of Oct. 1922.

FRANK L. MOORE,
Attorney for Plaintiff.

U. S. District Court, District of Idaho. Filed Oct. 16, 1922. W. D. McReynolds, Clerk. [147]

In the District Court of the United States for the District of Idaho, Central Division.

No. 784.

LEO BROTHERS COMPANY, a Corporation,
Plaintiff,

vs.

NORWICH UNION FIRE INSURANCE SOCIETY, a Corporation.
Defendant.

Order Denying New Trial.

Defendant's petition for new trial having been submitted by written stipulation, upon consideration,

IT IS ORDERED that said petition be and the same is hereby denied.

Dated this 19th day of June, 1923.

FRANK S. DIETRICH,
Judge.

U. S. District Court, District of Idaho. Filed Jun. 19, 1923. W. D. McReynolds, Clerk. [148]

In the District Court of the United States, Central Division, District of Idaho.

No. 784.

LEO BROTHERS COMPANY, a Corporation,
Plaintiff,

vs.

NORWICH UNION FIRE INSURANCE SOCIETY, LIMITED, OF NORWICH AND LONDON, ENGLAND, a Corporation,
Defendant.

Petition for Writ of Error.

The defendant, Norwich Union Fire Insurance Society of Norwich and London, England, a corporation, feeling itself aggrieved by the decision and judgment entered thereon in the above-entitled cause, comes now, by its attorneys, and petitions this Honorable Court and the Honorable Frank S. Dietrich, Judge thereof, for an order allowing it to prosecute a writ of error to the Honorable United States Circuit Court of Appeals, for the Ninth Circuit, under and in accordance to the laws of the United States in that behalf made and approved and also that an order be made fixing the amount of security which the defendant shall give, and furnish upon said writ of error, and that the judgment heretofore rendered be superseded and stayed pending the determination

of said cause in the Honorable Circuit Court of Appeals.

C. J. ORLAND,
Moscow, Idaho,
E. EUGENE DAVIS,
Spokane, Wn.,
Attorneys for Defendant.

U. S. District Court, District of Idaho. Filed Aug. 17, 1923. W. D. McReynolds, Clerk. [149]

In the District Court of the United States, Central Division, District of Idaho.

No. 784.

LEO BROTHERS COMPANY, a Corporation,
Plaintiff,

vs.

NORWICH UNION FIRE INSURANCE SOCIETY, LIMITED, OF NORWICH AND LONDON, ENGLAND, a Corporation,
Defendant.

Assignments of Error.

Comes now the above-named defendant by its attorneys, and files the following assignments of error upon which it will rely upon its prosecution of writ of error in the above-entitled cause from that certain judgment made by this Honorable Court on the 19th day of September, 1922:

I.

That the United States District Court for the

District of Idaho erred in deciding that the property destroyed by fire was insured under the policy of insurance sued on in the plaintiffs' complaint.

II.

That the United States District Court for the District of Idaho erred in denying the defendant's motion for judgment at the close of plaintiff's case.

III.

That the United States District Court for the District of Idaho erred in denying defendant's motion for judgment at the close of the entire case.

IV.

That the United States District Court for the District of Idaho erred in refusing to make findings for defendant as requested at the close of the entire case. [150]

V.

That the United States District Court for the District of Idaho erred in entering judgment for plaintiff in any sum.

VI.

That the United States District Court for the District of Idaho erred in deciding that there was any evidence or inference therefrom that the property destroyed was located or contained in the building described in the policy sued on as Block 102, No. 244, Sanborn Map.

VII.

That the United States District Court for the District of Idaho erred in construing the agreement of the parties as a contract of insurance of the contents of the building known as "Vinegar Tank Shed" referred to as Risk 240.

VIII.

That the United States District Court for the District of Idaho erred in deciding that the building the contents of which were destroyed, was the same building or part thereof, as the building known and described as No. 244, Block 102, Sanborn Map.

IX.

That the United States District Court for the District of Idaho erred in not deciding that the two buildings were separate and distinct risks and that the building and contents destroyed were not insured under the contract of insurance sued on in plaintiff's complaint.

C. J. ORLAND,
Moscow, Idaho.
E. EUGENE DAVIS,
Spokane, Wn.,
Attorneys for Defendant (Plaintiff in Error).

U. S. District Court, District of Idaho. Filed Aug. 17, 1923. W. D. McReynolds Clerk. [151]

In the District Court of the United States Central Division, District of Idaho.

No. 784.

LEO BROTHERS COMPANY, a Corporation,
Plaintiff,

vs.

NORWICH UNION FIRE INSURANCE SOCIETY, LIMITED, OF NORWICH AND LONDON, ENGLAND, a Corporation,
Defendants.

Order Allowing Writ of Error.

Upon motion of E. Eugene Davis and C. J. Orland for the above-named defendant, and upon filing a petition for a writ of error and assignment of errors as required by law, it is hereby

ORDERED that a writ of error be and the same is hereby allowed to have reviewed in the Honorable United States Circuit Court of Appeals for the Ninth Circuit the judgment entered herein; and it is further ordered that the amount of bond on said writ of error is hereby fixed at the sum of Five Hundred ($500.00) Dollars, to be given by the defendant.

IN WITNESS WHEREOF the above order is granted and allowed this 18th day of August, 1923.

FRANK S. DIETRICH,
Judge.

U. S. District Court, District of Idaho. Filed Aug. 18, 1923. W. D. McReynolds, Clerk. [152]

In the District Court of the United States, Central Division, District of Idaho.

No. 784.

LEO BROTHERS COMPANY, a Corporation,
Plaintiff,

vs.

NORWICH UNION FIRE INSURANCE SOCIETY, LIMITED, OF NORWICH AND LONDON, ENGLAND, a Corporation,
Defendant.

Bond on Writ of Error.

KNOW ALL MEN BY THESE PRESENTS, that we, Norwich Union Fire Insurance Society, Limited, a corporation, as principal, and United States Fidelity and Guaranty Company, a corporation organized under the laws of the State of Maryland and authorized to transact business as surety in the State of Idaho, are held and firmly bound unto Leo Brothers Company, plaintiff in the above action, in the sum of Five Hundred Dollars, for which sum well and truly to be paid to said Leo Brothers Company, its successors or assigns, we bind ourselves, our and each of our successors and assigns jointly and severally, firmly by these presents.

Sealed with our seals and dated this 5th day of September, A. D. 1923.

The condition of this obligation is such that whereas, the above-named defendant, Norwich Union Fire Insurance Society, Limited, a corporation, has sued out a writ of error to the United States Circuit Court of Appeals for the Ninth Circuit, to reverse the judgment in the above-entitled cause made and entered by the District Court of the United States for the District of Idaho, Central Division, and

WHEREAS, the said Norwich Union Fire Insurance Society, Limited, a corporation, desires to supersede said judgment and stay the issuance of execution thereon pending the determination [153] of said cause in the said United States Circuit Court of Appeals for the Ninth Circuit;

NOW, THEREFORE, the condition of this obligation is such that if the above-named Norwich Union Fire Insurance Society, Limited, a corporation, shall prosecute said writ of error to effect and pay all necessary costs and damages awarded against it, including the full amount of said judgment and interests, if it shall fail to make good its plea, then this obligation shall be void, else to remain in full force and virtue.

NORWICH UNION FIRE INSURANCE SOCIETY, LIMITED.

By E. EUGENE DAVIS,

Its Attorney.

Approved this 5th day of September, A. D. 1923.

FRANK S. DIETRICH,

Judge.

UNITED STATES FIDELITY & GUARANTY COMPANY.

By HENRY WHITSON,

Attorney-in-Fact.

U. S. District Court, District of Idaho. Filed Aug. 18, 1923. W. D. McReynolds, Clerk. [154]

In the District Court of the United States, Central Division, District of Idaho.

No. 784.

LEO BROTHERS COMPANY, a Corporation,
Plaintiff,

vs.

NORWICH UNION FIRE INSURANCE SOCIETY, LIMITED, OF NORWICH AND LONDON, ENGLAND, a Corporation,
Defendant.

Writ of Error.

United States of America,—ss.

The President of the United States to the Honorable, the Judge of the District Court of the United States for the District of Idaho, Northern Division, GREETING:

Because in the records and proceedings, as also in the rendition of the judgment, of a plea which is in the said District Court before you, or some of you, between the Norwich Union Fire Insurance Society, Limited, plaintiff in error and Leo Brothers Company, defendant in error, a manifest error hath happened to the great damage of the said Norwich Union Fire Insurance Society, Limited, a corporation, the plaintiff as by its petition herein appears:

That being willing that error, if any hath happened, should be duly corrected and full and speedy justice be done to the parties aforesaid, in this be-

half do command you, if judgment be therein given, that then under your seal, distinctly and openly you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the city of San Francisco in the State of California within thirty days from the date hereof, in the said Circuit Court of Appeals, that the records and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause to be done further therein to correct that error, what of right and according to law and [155] customs of the United States should be done.

WITNESS the Honorable WILLIAM HOWARD TAFT, Chief Justice of the Supreme Court of the United States, and the seal of this Court this 5th day of Sept., in the year of our Lord one thousand nine hundred and twenty-three.

[Seal] W. D. McREYNOLDS,
Clerk of the District Court of the United States for the District of Idaho, Northern Division.

Allowed by

FRANK S. DIETRICH,
District Judge.

U. S. District Court, District of Idaho. Filed Sept. 5, 1923. W. D. McReynolds, Clerk. [156]

In the District Court of the United States, Central Division, District of Idaho.

No. 784.

LEO BROTHERS COMPANY, a Corporation,
Plaintiff,

vs.

NORWICH UNION FIRE INSURANCE SOCIETY, LIMITED, OF NORWICH AND LONDON, ENGLAND, a Corporation,
Defendant.

Citation on Writ of Error.

United States of America,—ss.

The President of the United States of America to Leo Brothers Company, Defendant in Error, GREETINGS:

You are cited and admonished to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit at the courtroom of said court in the city of San Francisco and State of California, within thirty days from the date of this citation, pursuant to a writ of error on file in the clerk's office of the District Court of the United States in and for the District of Idaho, Central Division, wherein the Norwich Union Fire Insurance Society, Limited, a corporation, is plaintiff in error, and Leo Brothers Company is defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be cor-

rected and speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable WILLIAM H. TAFT, Chief Justice of the United States, this 5th day of September, 1923.

FRANK S. DIETRICH,
United States District Judge.

[Seal] Attest: W. D. McREYNOLDS,
Clerk.

Service of the foregoing Citation admitted and a true copy thereof received this 18th day of September, 1923, all other service and return hereby waived.

FRANK L. MOORE,
Attorney for Plaintiff.

U. S. District Court, District of Idaho. Sep. 22, 1923. W. D. McReynolds, Clerk. M. Franklin, Deputy. [157]

In the District Court of the Second Judicial District of the State of Idaho, in and for Latah County.

LEO BROTHERS COMPANY, a Corporation,
Plaintiff,

vs.

THE NEW BRUNSWICK FIRE INSURANCE COMPANY, a Corporation,
Defendant.

Complaint.

Comes now the above-named plaintiff, and for cause of action against the defendant, alleges:

I.

That at all the times herein mentioned the plaintiff has been and now is a corporation organized under the laws of the State of Idaho with its principal place of business and head office in Moscow, Latah County, Idaho, and has been and now is engaged in the operation of a cider and vinegar plant and has been and now is manufacturing cider and vinegar, at Moscow, Idaho.

II.

That at all times herein mentioned the defendant has been and now is a corporation organized under the laws of New Jersey, with its principal place of business and head office in New Brunswick, New Jersey, and has been and now is engaged in the general fire insurance business and has been and now is authorized to conduct its said business in the United States and plaintiff is informed and believes and upon such information and belief, alleges the truth to be that the defendant has complied with all the laws of the State of Idaho regarding foreign corporations and fire insurance companies doing business in the State of Idaho and has been and now is authorized to conduct and carry on its said business within the State of Idaho, and to make and enter into contracts of indemnity against loss by fire and issue and deliver fire insurance policies in conformity with and agreeable to the laws of the State of Idaho. [158]

III.

That at all times herein mentioned, Fred Veatch and M. J. Veatch have been and now are copartners

doing business at Moscow, Latah County, Idaho, under the name and style of Veatch Realty Co., and that said copartnership has been and now is engaged in the business of writing fire insurance.

IV.

That during all the times herein mentioned, the said Veatch Realty Co. has been and now is the duly appointed and authorized agent of the defendant at Moscow, Latah County, Idaho, and is authorized as such agent to make, issue and deliver to patrons of defendant its policies of insurance, indemnfying against loss by fire.

V.

That the buildings and premises in which plaintiff has been and now is conducting and carrying on its said business are located at the southeast corner of the intersection of Main and C Streets in Moscow, Idaho, and that upon the twenty-eighth day of July, 1920, and while plaintiff was the owner of said building and the contents thereof, the defendant acting by its duly authorized agent, Veatch Realty Co., did, upon the consideration of the stipulations therein named, and of $150.00 premium thereon, make, execute and deliver to the plaintiff its policy of insurance, No. 911476, whereby it, the defendant, did insure plaintiff, for the term of one year from the twenty-eighth day of July, 1920, at noon, to the twenty-eighth day of July, 1921, at noon, against any direct loss of merchandise of every description, consisting principally of cider vinegar, or any damage thereto, by fire, in an amount not exceeding $6,000.00 while contained in

said building, and which said building is described in said policy of insurance as located at No. 244 on the southeast corner of Main and "C" Streets, in Moscow, Idaho, and as being located in Block 102, No. 244—"D," according to Sanborn's Fire Insurance map of Moscow, Idaho, and that said building was described in said policy of insurance as a three-story, composition [159] roof, brick and one-story frame building and its additions of like construction communicating and in contact therewith. That a true and correct copy of said policy of insurance is hereunto attached and made a part hereof and plaintiff asks that in all proceedings herein, said policy of insurance may be read and all its terms and conditions be considered with the same force and effect as if the legal effect thereof were pleaded herein by affirmative allegations.

VI.

That said policy of insurance so executed and delivered to the plaintiff permitted other concurrent insurance upon said building, and said defendant did thereby promise and agree that in the event of the direct loss of or damage to said merchandise while contained in said building by fire, it would pay plaintiff its share or portion thereof.

VII.

That long prior to July 6th, 1921, plaintiff paid to defendant and defendant has accepted and received from plaintiff the said consideration for said policy of insurance, to wit, the sum of $150.00 the premium thereon.

VIII.

That after the issuance and delivery of said policy of insurance to plaintiff, as above set forth, and on or about the 6th day of July, 1921, and while plaintiff was the owner thereof, said building was partially destroyed, and the merchandise contained therein, consisting principally of cider vinegar, was wholly destroyed by fire, for the origin of which plaintiff was in no way or manner responsible, and that when so destroyed by fire there was other concurrent insurance upon said merchandise under certain policies of insurance issued by other companies in the amount of $25,000.00 and that plaintiff's loss upon said fire, amounted to $31,116.00, and that the amount thereof for which the defendant became and now is liable to and is now owing plaintiff under its said Policy of Insurance No. 911476, is $6,000.00. [160]

IX.

That upon the occurrence of said fire the plaintiff gave the defendant immediate notice of the loss thereby in writing and within sixty days after the fire, rendered a statement to the defendant, signed and sworn to by plaintiff, stating the knowledge and belief of plaintiff as to the time and origin of said fire, the interest of plaintiff in the property and the amount of loss thereon, all other insurance covering said merchandise or any part thereof, and a copy of all the descriptions and schedules in all policies thereon, by whom and for what purpose the said building and the several parts thereof were occupied at the time of said fire and complied

with all the terms and conditions in said policy of insurance contained by it to be kept and performed in case of a loss thereof or injury thereto by fire.

X.

That it is provided in said policy of insurance that the sum for which defendant is liable pursuant to said policy, shall be payable sixty days after due notice and proof of loss, that this plaintiff gave said notice required by the terms of said policy and made said proof of loss and delivered the same to the defendant on the 29th day of August, 1921, and more than sixty days have elapsed since making said proof of loss as required by the terms of said policy, and that the defendant has not paid its said loss to the plaintiff, or any part or portion thereof.

XI.

That by reason of the premises plaintiff alleges that the defendant is indebted to the plaintiff in the sum of $6000, with interest thereon from October 29th, 1921, at the rate of 7% per annum, no part of which has been paid.

WHEREFORE, plaintiff prays judgment against the defendant for the sum of $6000.00 with interest thereon from and after the 29th day of October, 1921, until the entry of judgment herein, at the rate of seven per cent per annum, and for its costs and disbursements [161] herein sustained.

FRANK L. MOORE,

Attorney for Plaintiff, Residing at Moscow, Idaho.

(Duly verified.) [162]

Exhibit "A."

STANDARD FIRE INSURANCE POLICY
STOCK COMPANY.

No. 911476.

THE NEW BRUNSWICK FIRE INSURANCE COMPANY

New Brunswick, N. J.

PACIFIC DEPARTMENT

San Francisco.

Wm. W. Alverson, Manager.

Organized 1826.

Amount $6000.00 Rate 250 Premium $150.00

IN CONSIDERATION of the stipulations herein named and of One Hundred Fifty and no/100 Dollars premium, does insure LEO BROTHERS COMPANY, for the term of One Year from the Twenty-eighth day of July, 1920, at noon to the twenty-eighth day of July, 1921, at noon, against ALL DIRECT LOSS OR DAMAGE BY FIRE, except as hereinafter provided, to an amount not exceeding SIX THOUSAND AND No. 100 Dollars, to the following described property while located and contained as described herein, and now elsewhere, to wit:

Standard Forms Bureau Form 367 (May 1918).

MERCHANDISE AND FIXTURES FORM.

On the following described property, all situate No. 244 on the Southeast corner of Main and "C" Streets, in Moscow, Idaho:

*	$6000.00	On merchandise of every description, consisting principally of Cider Vinegar manufactured or in process of manufacture, and on materials from manufacturing same, including packages, labels, cases, boxes and all wrapping and packing materials, being the property of insured or sold but not removed; and (PROVIDED the insured shall be liable by law for loss or damage thereto or shall have specifically assumed liability therefor) this insurance shall also cover merchandise held in trust, or on commission, or left for storage or repairs; all only while contained in the three story comp. roof, brick & one story frame building and its additions (if any) of like construction communicating and in contact therewith, situate as above.
* 2	$Nil	On store, office and workshop furniture and fixtures and equipment; and on awnings, implements, signs and tools; and on supplies incidental to the business of insured not described under item 1 above; all only while contained in, on or attached to above described building and its additions (if any) of like construction communicating and in contact therewith.

* 3 $Nil On .....

.....

* 4 $Nil On .....

.....

* No insurance attaches under any of the above items unless a certain amount is specified and inserted in the blank immediately preceding the item.

Loss or damage for which insured shall be liable by law, or for which insured shall have specifically assumed liability, under item 1 above, shall be adjusted with and payable to the insured named in this policy.

"Restriction in Case of Specific Insurance." No article or piece of personal property separately insured for a specific amount under [163] this, or any other policy, is covered by this policy except for such specified amount, if any, named herein; nor shall this company be liable for loss to merchandise of others for which the insured is liable by law or shall have specifically assumed liability, on which insurance is carried by or in the name of others than the insured named in this policy.

"SIDEWALK CLAUSE." It is understood that property above described is also covered under its respective items, on sidewalks, platforms and alleyways pertaining to above described building, only while in daily transit to and from said building.

Other insurance permitted.

The provisions printed on the back of this form are hereby referred to and made a part hereof.

Attached to Policy No. 911476 of the New Brunswick Agency at Moscow, Idaho. Dated July 28, 1920.

Insurance Map.
Sheet 4.
Block 102.
No. 244.

VEATCH REALTY CO.,
Agent.

For other provisions see reverse side of this rider.

Provisions Referred to in and Made A Part of This Rider (367):

"PERMITS." Permission granted to make alteration or repairs to the above building without limit of time, and to build additions, and if of like construction and communicating and in contact therewith, this policy shall cover in same under its respective items; permission also granted to do such work in said building as the nature of the occupancy may require; to work at any and all times; and, when not in violation of law or ordinance, to generate illuminating gas or vapor, and to keep and use the necessary quantities of all articles, things and materials incidental to the business conducted therein and for the operation of said building, it being warranted by insured that no artificial light (other than incandescent electric light) be permitted in the room when the reservoir of any machine or device using petroleum or any of its products of greater inflammability than kerosene oil is being filled or drawn on. A breach of this warranty suspends this insurance during such

breach. But notwithstanding anything here contained, the use, keeping, allowing, or storing on the within described premises of dynamite, fireworks, Greek fire, gunpowder in excess of fifty pounds, nitro glycerine or other explosives is prohibited and shall wholly suspend this policy during the period such use, keeping, allowing or storing shall continue unless a specific permit therefor is attached to this policy.

"LIGHTNING CLAUSE." This policy shall cover any direct loss or damage by lightning (meaning thereby the commonly accepted use of the term "lightning" and in no case to include loss or damage by cyclone, tornado or windstorm) and not exceeding the sum insured nor the interest of the insured in the property, and subject in all other respects to the terms and conditions of this policy; provided, however, that if there shall be any other insurance on said property this company shall be liable only *pro rata* with such other insurance for any direct loss by lightning whether such other insurance be against direct loss by lightning or not.

"ELECTRICAL EXEMPTION CLAUSE." If dynamos, wiring, lamps, motors, switches or other electrical appliances or devices are insured by this policy, this insurance shall not cover any immediate loss or damage to dynamos, exciters, lamps, motors, switches, or any other apparatus for generating, utilizing, testing, regulating, or [164] distributing electricity, caused directly by electric currents therein whether artificial or natural.

This policy is made and accepted subject to the foregoing stipulations and conditions, and to the following stipulations and conditions printed on back hereof, which are hereby specially referred to and made a part of this policy, together with such other provisions, agreements or conditions as may be endorsed hereon or added hereto; and no officer, agent or other representative of this company shall have power to waive any provision or condition of this Policy except such as by the terms of this Policy may be the subject of agreement endorsed hereon or added hereto; and as to such provisions and conditions no officer, agent or representative shall have such power or be deemed or held to have waived such provisions or conditions unless such waiver, if any, shall be written upon or attached hereto, nor shall any privilege or permission affecting the insurance under this Policy exist or be claimed by the insured unless so written or attached.

IN WITNESS WHEREOF, THIS COMPANY HAS EXECUTED and attested these presents; but this policy shall not be valid unless countersigned by the duly authorized agent of the company at Moscow, Idaho.

GEO. A. VIEHMANN,
President.

CHAS. D. ROSS,
Secretary.

COUNTERSIGNED at Moscow, Idaho, this 28th day of July, 1920.

FRED VEATCH,
Agent. [165]

This company shall not be liable beyond the actual cash value of the property at the time any loss or damage occurs, and the loss or damage shall be ascertained or estimated according to such actual cash value, with proper deduction for depreciation however caused, and shall in no event exceed what it would then cost the insured to repair or replace the same with material of like kind and quality; said ascertainment or estimate shall be made by the insured and this company, or, if they differ, then by appraisers, as hereinafter provided; and, the amount of loss or damage having been thus determined, the sum for which this company is liable pursuant to this policy shall be payable sixty days after due notice, ascertainment, estimate and satisfactory proof of the loss have been received by this company in accordance with the terms of this policy. It shall be optional, however, with this company to take all, or any part, of the articles at such ascertained or appraised value, and also to repair, rebuild, or replace the property lost or damaged, with other of like kind and quality within a reasonable time on giving notice, within thirty days after the receipt of the proof herein required, of its intention so to do; but there can be no abandonment to this company of the property described.

This entire policy shall be void if the insured has concealed or misrepresented, in writing or otherwise, any material fact or circumstance concerning this insurance or the subject thereof; or if the interest of the insured in the property be not truly stated herein; or in case of any fraud or false

swearing by the insured touching any matter relating to this insurance or the subject thereof whether before or after a loss.

This entire policy, unless otherwise provided by agreement endorsed hereon or added hereto, shall be void if the insured now has or shall hereafter make or procure any other contract of insurance, whether valid or not, on property covered in whole or in part by this policy; or if the subject of insurance be a manufacturing establishment and it be operated in whole or in part at night later than ten o'clock, or if it cease to be operated for more than ten consecutive days; or if the hazard be increased by any means within the control or knowledge of the insured; or if mechanics be employed in building, altering or repairing the within described premises for more than fifteen days at any one time; or if the interest of the insured be other than unconditional and sole ownership; or if the subject of insurance be a building on ground not owned by the insured in fee simple, or if the subject of insurance be personal property and be or become incumbered by a chattel mortgage; or if, with the knowledge of the insured, foreclosure proceedings be commenced or notice given of sale of any property covered by this policy by virtue of any mortgage or trust deed; or if any change, other than by the death of an insured, take place in the interest, title, or possession of the subject of insurance (except change of occupants without increase of hazard) whether by legal process or judgment or by voluntary act of the insured, or otherwise; or if this

policy be assigned before a loss; or if illuminating gas or vapor be generated in the described building (adjacent thereto) for use therein; or if (any usage or custom of trade or manufacture to the contrary notwithstanding) there be kept, used, or allowed on the above-described premises, benzine, benzole, dynamite, ether, fireworks, gasoline, Greek fire, gunpowder exceeding twenty-five pounds in quantity, naptha, nitro-glycerine or other explosives, phosphorus, or petroleum or any of its products of greater inflammability than kerosene oil of the United States Standard (which last may be used for lights and kept for sale according to law but in quantities not exceeding five barrels, provided it be drawn and lamps filled by daylight or at a distance not less than ten feet from artificial light); or if a building herein described, whether intended for occupancy by owner or tenant, be or become vacant or unoccupied and so remain for ten days. [166]

This company shall not be liable for loss caused directly or indirectly by invasion, insurrection, riot, civil war or commotion or military or usurped power, or by order of any civil authority; or by theft; or by neglect of the insured to use all reasonable means to save and preserve the property at and after a fire or when the property is endangered by fire in neighboring premises; or (unless fire ensues, and, in that event, for the damage by fire only) by explosion of any kind, or lightning; but liability for direct damage by lightning may be assumed by specific agreement hereon.

If a building or any part thereof fall, except as the result of fire, all insurance by this policy on such building or its contents shall immediately cease.

This company shall not be liable for loss to accounts, bills, currency, deeds, evidence of debt, money, notes, or securities; nor, unless liability is specifically assumed hereon for loss to awnings, bullion, casts, curiosities, drawings, dies, implements, jewels, manuscripts, medals, models, patterns, pictures, scientific apparatus, signs, store or office furniture or fixtures, sculpture, tools, or property held on storage or for repairs; nor, beyond the actual value destroyed by fire, for loss occasioned by ordinance or law regulating construction or repair of buildings, or by interruption of business, manufacturing processes, or otherwise; nor for any greater proportion of the value of plate glass, frescoes, and decorations than that which this policy shall bear to the whole insurance on the building described.

If any application, survey, plan, or description, of property be referred to in this policy it shall be a part of this contract and a warranty by the insured.

In any matter relating to this insurance no person, unless duly authorized in writing, shall be deemed the agent of this company.

This policy may by a renewal be continued under the original stipulations, in consideration of premium for the renewed term, provided that any increase of hazard must be made known to this com-

pany at the time of renewal or this policy shall be void.

This policy shall be canceled at any time at the request of the insured; or by the company by giving five days' notice of such cancellation. If this policy shall be canceled as hereinbefore provided, or become void or cease, the premium having been actually paid, the unearned portion shall be returned on surrender of this policy or last renewal, this company retaining the customary short rate; except than when this policy is canceled by this company by giving notice it shall retain only the *pro rata* premium.

If, with the consent of this company, an interest under this policy shall exist in favor of a mortgagee or of any person or corporation having an interest in the subject of insurance other than the interest of the insured as described herein, the conditions hereinbefore contained shall apply in the manner expressed in such provisions and conditions of insurance relating to such interest as shall be written upon, attached, or appended hereto.

If property covered by this policy is so endangered by fire as to require removal to a place of safety, and is so removed, that part of this policy in excess of its proportion of any loss and of the value of property remaining in the original location, shall, for the ensuing five days only, cover the property so removed in the new location; if removed to more than one location, such excess of this policy shall cover therein for such five days in the proportion that the value in any one such new location

bears to the value in all such new locations; but this company shall not, in any case of removal, whether to one or more locations, be liable beyond the proportion that the amount hereby insured shall bear to the total insurance on the whole property at the time of fire, whether the same cover in new location or not. [167]

If fire occur the insured shall give immediate notice of any loss thereby in writing to this company, protect the property from further damage, forthwith separate the damaged and undamaged personal property, put it in the best possible order, make a complete inventory of the same, stating the quantity and cost of each article and the amount claimed therein; and, within sixty days after the fire, unless such time is extended in writing by this company, shall render a statement to this company, signed and sworn to by said insured, stating the knowledge and belief of the insured as to the time and origin of the fire; the interest of the insured and of all others in the property; the cash value of each item thereof and the amount of loss thereon; all incumbrances thereon; all other insurance, whether valid or not, covering any of said property; and a copy of all the descriptions and schedules in all policies; any changes in the title, use, occupation, location, possession, or exposures of said property since the issuing of this policy; by whom and for what purpose any building herein described and the several parts thereof were occupied at the time of fire; and shall furnish, if required, verified plans and specifications of any building, fixtures, or machinery

destroyed or damaged; and shall also, if required, furnish a certificate of the magistrate or notary public (not interested in the claim as a creditor or otherwise, nor related to the insured) living nearest the place of fire, stating that he has examined the circumstances and believes the insured has honestly sustained loss to the amount that such magistrate or notary public shall certify.

The insured, as often as required, shall exhibit to any person designated by this company all that remains of any property herein described, and submit to examinations under oath by any person named by this company and subscribe the same; and, as often as required, shall produce for examination all books of account, bills, invoices, and other vouchers, or certified copies thereof if originals be lost, at such reasonable place as may be designated by this company or its representative, and shall permit extracts and copies thereof to be made.

In the event of disagreement as to the amount of loss the same shall, as above provided, be ascertained by two competent and disinterested appraisers, the insured and this company each selecting one, and the two so chosen shall first select a competent and disinterested umpire; the appraisers together shall then estimate and appraise the loss, stating separately sound value and damage, and failing to agree, shall submit their differences to the umpire; and the award in writing of any two shall determine the amount of such loss; the parties thereto shall pay the appraiser respectively selected

by them and shall bear equally the expenses of the appraisal and umpire.

This company shall not be held to have waived any provision or condition of this policy or any forfeiture thereof by any requirement act, or proceeding on its part relating to the appraisal or to any examination herein provided for; and the loss shall not become payable until sixty days after the notice, ascertainment, estimate and satisfactory proof of the loss herein required have been received by this company, including an award by appraisers when appraisal has been required.

This company shall not be liable under this policy for a greater portion of any loss on the described property, or for loss by and expense of removal from premises endangered by fire, than the amount hereby insured shall bear to the whole insurance, whether valid or not, or by solvent or insolvent insurers, covering such property, and the extent of the application of the insurance under this policy or of the contribution to be made by this company in case of loss, may be provided for by agreement or condition written hereon or attached or appended hereto. Liability for reinsurance shall be as specifically agreed hereon. [168]

If this company shall claim that the fire was caused by the act or neglect of any person or corporation, private or municipal, this company shall, on payment of the loss, be subrogated to the extent of such payment to all right of recovery by the insured for the loss resulting therefrom, and such

right shall be assigned to this company by the insured on receiving such payment.

No suit or action on this policy, for the recovery of any claim, shall be sustainable in any court of law or equity until after full compliance by the insured with all the foregoing requirements, nor unless commenced within twelve months next after the fire.

Wherever in this policy the word "insured" occurs, it shall be held to include the legal representative of the insured, and whenever the word "loss" occurs, it shall be deemed the equivalent of "loss" or damage."

If this policy be made by a mutual or other company having special regulations lawfully applicable to its organization, membership, policies or contracts of insurance, such regulations shall apply to and form a part of this policy as the same may be written or printed upon, attached, or appended hereto.

ASSIGNMENT OF INTEREST BY INSURED:

This Policy is not assignable for purposes of collateral security, but in all such cases it is to be made "Payable in case of loss, etc., by declaration on its face. In case of actual sale or transfer of title, the annexed form should be used, which must be executed at the time of said transfer.

FOR VALUE RECEIVED, —— hereby transfer, assign and set over unto —— and —— assigns —— title and interest in this policy and all advantages to be derived therefrom subject to all the

terms and conditions therein mentioned and referred to.

_____,
(Signature of Insured.)

_____, 19—.

THE NEW BRUNSWICK FIRE INSURANCE COMPANY

hereby consents that the interest of —— in the within policy subject to all the terms and conditions therein mentioned and referred to, to be assigned to ——.

_____,
Agent.

_____, 19—.

FORM FOR REMOVAL.

Permission is hereby granted to remove the property insured by this policy to the ——, situate ——, and this Policy is hereby made to cover the same property for like amounts in new locality, all liability in former locality to cease from this date.

Rate increase to —— %. Additional Premium $——.

Rate reduced to —— %. Return Premium $——.

Dated _____, 19—.

Sheet ——. Block ——. No. ——.

_____,
Agent. [169]

[Endorsed on back:]

STANDARD FIRE INSURANCE POLICY.
STOCK COMPANY.

Expires July 28, 1921.
Location Vinegar.
Amt. $6000.00. Premium $150.00.
Name of Insured:
LEO BROTHERS COMPANY.
No. 911476.
THE NEW BRUNSWICK.
Organized 1826.
FIRE INSURANCE COMPANY,
New Brunswick, N. J.
Pacific Department,
266 Bush Street, San Francisco, Cal.
Rotunda Mills Building.
WM. W. ALVERSON, Manager.
H. T. Ungewitter, Assistant Manager.

It is important that the written portions of all policies covering the same property read exactly alike.

If they do not, they should be made uniform at once.

Please read your policy.

U. S. District Court, District of Idaho. Filed Jan. 28, 1922. W. D. McReynolds, Clerk. [170]

In the District Court of the United States for the District of Idaho, Central Division.

LEO BROTHERS, a Corporation,

Plaintiff,

vs.

THE NEW BRUNSWICK FIRE INSURANCE COMPANY, a Corporation,

Defendant.

Stipulation Waiving Jury.

It is hereby agreed and stipulated by and between the parties hereto, through their attorneys of record, that the issues of fact in the above-entitled cause may be tried and determined by the Court without the intervention of a jury, the parties hereto hereby waiving a jury.

Dated this 19th day of May, 1922.

FRANK L. MOORE,

_____,

Attorneys for Plaintiff.

WM. E. LEE,

E. EUGENE DAVIS,

Attorneys for Defendant. [171]

(Title of Court and Cause.)

#785.

Judgment.

This cause came on regularly for trial on the 19th day of May, A. D. 1922, and the plaintiff appearing

by Frank L. Moore, its counsel of record, and the defendant appearing by its counsel of record, E. Eugene Davis, Esq., and Orland & Lee, and a trial by a jury having been expressly waived by the respective parties by written stipulation filed with the clerk of the above-entitled Court, the cause was tried before the Court sitting without a jury; whereupon witnesses on the part of plaintiff and defendant were duly sworn and examined and documentary evidence was introduced by the respective parties, and the evidence being closed, the cause was submitted to the Court for consideration and decision, and after due deliberation thereon, the Court files its findings and decision in writing, and orders that judgment be entered herein in accordance therewith in favor of the plaintiff.

WHEREFORE, by reason of the law and the findings aforesaid, it is ordered, adjudged and decreed that the plaintiff, Leo Brothers Company, a corporation, do have and recover of and from the defendant, The New Brunswick Fire Insurance Company, a corporation, the sum of Four Thousand and Fourteen Dollars ($4014.00), and for plaintiff's costs and disbursements herein expended, taxed at $20.25.

Dated this 19th day of September, 1922.

FRANK S. DIETRICH,
Judge.

[Endorsed]: Filed Sept. 19, 1922. W. D. McReynolds, Clerk. [172]

In the District Court of the United States for the District of Idaho, Central Division.

No. 785.

LEO BROTHERS COMPANY, a Corporation,
Plaintiff,

vs.

THE NEW BRUNSWICK FIRE INSURANCE COMPANY, a Corporation,
Defendant.

Exceptions of Defendant.

Comes now defendant and excepts to the decision of the Court in the entry of judgment herein, for the reason that there is no evidence to support said decision and judgment and said decision and judgment are against the law and facts in the case.

Defendant further excepts to the Court's failure and refusal to make findings and enter judgment for defendant herein.

E. EUGENE DAVIS,
Spokane, Washington,
WM. E. LEE,
Moscow, Idaho,
Attorneys for Defendant.

U. S. District Court, District of Idaho. Filed Oct. 10, 1922. W. D. McReynolds, Clerk. [173]

In the District Court of the United States, Central Division, District of Idaho.

LEO BROTHERS COMPANY, a Corporation,
Plaintiff,

vs.

THE NEW BRUNSWICK FIRE INSURANCE COMPANY, a Corporation,
Defendant.

Petition for New Trial.

Comes now the defendant and petitions the Court to vacate judgment herein and grant defendant a new trial, upon the following grounds:

I.

Insufficiency of the evidence to justify a decision and judgment, and that said decision and judgment are against law.

II.

Error in law occurring at the trial.

This application is made upon the pleadings herein, consisting of plaintiff's complaint and defendant's answer and the judgment herein, and upon the minutes of the Court which shall include the clerk's minutes and any notes and memorandum which may have been kept by the Judge and also reporter's transcript of his shorthand notes of the evidence introduced.

Defendant specifies the following particulars wherein the evidence is insufficient to justify the decisions or sustain the judgment:

(a) The evidence is insufficient and there is no evidence to establish in any manner, or tend to establish, any liability on the part of the defendant, as insurer, for the loss of the property in question.

(b) The evidence is insufficient and there is no evidence to establish any contract of insurance with defendant covering the property destroyed by fire. [174]

(c) The evidence is insufficient and there is no evidence to sustain a decision that the property destroyed by fire was included within the description of the property insured by the contract in question.

(d) The evidence is insufficient and there is no evidence to establish, or tend to establish, the fact that the property destroyed by fire was located, situated or contained in the building described in said contract of insurance as located at #244 on the southeast corner of Main and C Street, Moscow, Idaho.

(e) The evidence is insufficient and there is no evidence to establish, or tend to establish, the fact that the property destroyed by fire was located, situated or contained in the building described in said contract of insurance as located in Block 102, #244 Sanborn's fire map of Moscow, Idaho.

(f) The evidence is insufficient and there is no evidence to establish, or tend to establish, the fact that the property destroyed by fire was the property agreed to be insured by the contract of the parties.

(g) The evidence is insufficient and there is no evidence to establish, or tend to establish, the fact that the property destroyed by fire was located and situated in any building agreed upon between the parties as the building wherein the insured property was to be located.

(h) The evidence is insufficient and there is no evidence to establish, or tend to establish, the fact that on account of the destruction of any property belonging to plaintiff this defendant became, or is liable to, or is owing plaintiff the sum of $4014.00, or any other sum.

(i) The evidence is insufficient and there is no evidence establishing, or tending to establish, that defendant agreed to insure any property located or contained in the building used as storage for vinegar tanks and their contents.

(j) The evidence is insufficient and there is no evidence or disputed questions of fact upon which the finding or [175] decision can be based to establish, or tend to establish, that defendant ever entered into any contract of insurance with plaintiff to insure it against the loss of the property destroyed.

(k) The evidence is insufficient to justify the decision and judgment in that the evidence shows without dispute that the parties to the contract of insurance agreed that the building referred to as the factory proper and the building referred to as the vinegar factory proper and the building referred to as the vinegar tank-sheds were two

separate and distinct risks and two separate and distinct subjects of insurance.

(1) The decision and judgment is against law in that there is no fact or inference therefrom to support the finding that the property destroyed by fire was included within any contract of insurance entered into between plaintiff and defendant.

Defendant specifies the following particular errors of law relied upon:

The Court erred in construing the agreement of the parties as a contract for the insurance of the contents of the building referred to as the vinegar tank-shed.

The Court erred in denying defendant's motion for judgment at the close of plaintiff's case.

The Court erred in refusing to make findings in favor of defendant as requested at the close of the entire case.

The Court erred in deciding the issues in favor of plaintiff.

The Court erred in entering judgment in favor of plaintiff.

E. EUGENE DAVIS,
WM. E. LEE,
Attorneys for Defendant.

U. S. District Court, District of Idaho. Filed Oct. 16, 1922. W. D. McReynolds, Clerk. [176]

(Title of Court and Cause.)

Order Denying New Trial.

Defendant's petition for a new trial having been submitted by written stipulation,—

Upon consideration it is ORDERED that said petition be, and the same hereby is, denied.

Dated this 19th day of June, 1923.

FRANK S. DIETRICH,
Judge.

[Endorsed]: Filed June 19, 1923. W. D. McReynolds, Clerk. By Pearl E. Zanger, Deputy. [177]

In the District Court of the United States, Central Division, District of Idaho.

No. 785.

LEO BROTHERS COMPANY, a Corporation,
Plaintiff,

vs.

THE NEW BRUNSWICK FIRE INSURANCE COMPANY, a Corporation,
Defendant.

Petition for Writ of Error.

The defendant, the New Brunswick Fire Insurance Company, a corporation, feeling itself aggrieved by the decision and judgment entered thereon in the above-entitled cause, comes now, by its attorneys, and petitions this Honorable

Court, and the Honorable Frank S. Dietrich, Judge thereof, for an order allowing it to prosecute a writ of error to the Honorable United States Circuit Court of Appeals, for the Ninth Circuit, under and in accordance to the laws of the United States in that behalf made and approved and also that an order be made fixing the amount of security which the defendant shall give and furnish upon said writ of error, and that the judgment heretofore rendered be superseded and stayed pending the determination of said cause in the Honorable Circuit Court of Appeals.

C. J. ORLAND,
Moscow, Idaho,
E. EUGENE DAVIS,
Spokane, Wn.,
Attorneys for Defendant.

U. S. District Court, District of Idaho. Filed Aug. 17, 1923. W. D. McReynolds, Clerk. [178]

In the District Court of the United States, Central Division, District of Idaho.

No. 785.

LEO BROTHERS COMPANY, a Corporation,
Plaintiff,

vs.

THE NEW BRUNSWICK FIRE INSURANCE COMPANY, a Corporation,
Defendant.

Assignments of Error.

Comes now the above-named defendant by its attorneys, and files the following assignments of error upon which it will rely upon its prosecution of writ of error in the above-entitled cause from that certain judgment made by this Honorable Court on the 19th day of September, 1922:

I.

That the United States District Court for the District of Idaho erred in deciding that the property destroyed by fire was insured under the policy of insurance sued on in the plaintiff's complaint.

II.

That the United States District Court for the District of Idaho erred in denying defendant's motion for judgment at the close of plaintiff's case.

III.

That the United States District Court for the District of Idaho erred in denying defendant's motion for judgment at the close of the entire case.

IV.

That the United States District Court for the District of Idaho erred in refusing to make findings for defendant as requested at the close of the entire case. [179]

V.

That the United States District Court for the

District of Idaho erred in entering judgment for plaintiff in any sum.

VI.

That the United States District Court for the District of Idaho erred in deciding that there was any evidence or inference therefrom that the property destroyed was located or contained in the building described in the policy sued on as Block 102, No. 244, Sanborn Map, on the S. E. corner of Main and "C" Streets, Moscow.

VII.

That the United States District Court for the District of Idaho erred in construing the agreement of the parties as a contract of insurance of the contents of the building known as "Vinegar Tank Shed" referred to as Risk 240.

VIII.

That the United States District Court for the District of Idaho erred in deciding that the building, the contents of which were destroyed, was the same building or part thereof, as the building known and described as No. 244, Block 102, Sanborn Map.

IX.

That the United States District Court for the District of Idaho erred in not deciding that the two buildings were separate and distinct insurance risks, and that the building and contents destroyed

were not insured under the contract of insurance sued on in plaintiff's complaint.

C. J. ORLAND,
Moscow, Idaho.
E. EUGENE DAVIS,
Spokane, Wn.,
Attorneys for Defendant (Plaintiff in Error).

U. S. District Court, District of Idaho. Filed Aug. 17, 1923. W. D. McReynolds, Clerk. [180]

In the District Court of the United States, Central Division, District of Idaho.

No. 785.

LEO BROTHERS COMPANY, a Corporation,
Plaintiff,

vs.

THE NEW BRUNSWICK FIRE INSURANCE COMPANY, a Corporation,
Defendant.

Order Allowing Writ of Error.

Upon motion of E. Eugene Davis and C. J. Orland for the above-named defendant, and upon filing a petition for a writ of error and assignment of errors as required by law, it is hereby

ORDERED, that a writ of error be and the same is hereby allowed to have reviewed in the Honorable United States Circuit Court of Appeals for the Ninth Circuit the judgment entered herein; and it is further ordered that the amount of bond on said

writ of error is hereby fixed at the sum of five hundred ($500.00) dollars, to be given by the defendant, and on the giving of said bond the judgment heretofore rendered will be superseded pending the hearing of said cause in the Honorable Circuit Court of Appeals.

IN WITNESS WHEREOF, the above order is granted and allowed this 18th day of August, 1923.

FRANK S. DIETRICH,
Judge.

U. S. District Court, District of Idaho. Filed Aug. 18, 1923. W. D. McReynolds, Clerk. [181]

In the District Court of the United States, Central Division, District of Idaho.

No. 785.

LEO BROTHERS COMPANY, a Corporation,
Plaintiff,

vs.

THE NEW BRUNSWICK FIRE INSURANCE COMPANY, a Corporation,
Defendant.

Bond on Writ of Error.

KNOW ALL MEN BY THESE PRESENTS, that we, the New Brunswick Fire Insurance Company, a corporation, as principal, and United States Fidelity & Guaranty Company, a corporation organized under the laws of the State of Maryland and authorized to transact business as surety in

the State of Idaho, are held and firmly bound unto Leo Brothers Company, plaintiff in the above action, in the sum of five hundred ($500.00) dollars for which sum well and truly to be paid to said Leo Brothers Company, its successors or assigns, we bind ourselves, our and each of our successors and assigns jointly and severally, firmly by these presents.

Sealed with our seals and dated this 5th day of September, A. D. 1923.

The condition of this obligation is such that whereas, the above-named defendant, New Brunswick Fire Insurance Company, a corporation, has sued out a writ of error to the United States Circuit Court of Appeals for the Ninth Circuit, to reverse the judgment in the above-entitled cause made and entered by the District Court of the United States for the District of Idaho, Central Division, and

WHEREAS, the said New Brunswick Fire Insurance Company, a corporation, desires to supersede said judgment and stay the issuance of execution thereon pending the determination of said cause in the said United States Circuit Court of Appeals for the Ninth Circuit; [182]

NOW, THEREFORE, the condition of this obligation is such that if the above-named New Brunswick Fire Insurance Company, a corporation, shall prosecute said writ of error to effect and pay all necessary costs and damages awarded against it, including the full amount of said judgment and interest, if it shall fail to make good its plea, then

this obligation shall be void, else to remain in full force and virtue.

NEW BRUNSWICK FIRE INSURANCE COMPANY.

By E. EUGENE DAVIS,
Its Attorney.

Approved this 5th day of September, A. D. 1923.

FRANK S. DIETRICH,
Judge.

UNITED STATES FIDELITY & GUARANTY CO.

By HENRY WHITSON,
Attorney-in-Fact.

U. S. District Court, District of Idaho. Filed Sep. 5, 1923. W. D. McReynolds, Clerk. [183]

In the District Court of the United States, Central Division, District of Idaho.

No. 785.

LEO BROTHERS COMPANY, a Corporation,
Plaintiff,

vs.

THE NEW BRUNSWICK FIRE INSURANCE COMPANY, a Corporation,
Defendant.

Writ of Error.

United States of America,—ss.

The President of the United States to the Honorable Judge of the District Court of the United States for the District of Idaho, Northern Division, GREETING:

Because in the records and proceedings, as also in the rendition of the judgment, of a plea which is in the said District Court before you, or some of you, between the New Brunswick Fire Insurance Company, plaintiff in error and Leo Brothers Company, defendant in error, a manifest error hath happened to the great damage of the said New Brunswick Fire Insurance Company, a corporation, the plaintiff as by its petition herein appears:

That being willing that error, if any, hath happened, should be duly corrected and full and speedy justice be done to the parties aforesaid, in this behalf do command you, if judgment be therein given, that then under you seal, distinctly and openly you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the city of San Francisco in the State of California within thirty days from the date thereof, in the said Circuit Court of Appeals, that the records and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause to be done further therein to correct that error, what of right

and according to law and customs of the United States should be done. [184]

WITNESS the Honorable WILLIAM HOWARD TAFT, Chief Justice of the Supreme Court of the United States, and the seal of this court this 5th day of Sept., in the year of our Lord one thousand nine hundred and twenty-three.

W. D. McREYNOLDS,
Clerk of the District Court of the United States for the District of Idaho, Northern Division.

Allowed by

FRANK S. DIETRICH,
District Judge.

U. S. District Court, District of Idaho. Filed Sep. 5, 1923. W. D. McReynolds, Clerk. [185]

In the District Court of the United States, Central Division, District of Idaho.

No. 785.

LEO BROTHERS COMPANY, a Corporation,
Plaintiff,

vs.

THE NEW BRUNSWICK FIRE INSURANCE COMPANY, a Corporation,
Defendant.

Citation on Writ of Error.

United States of America,—ss.

The President of the United States of America to Leo Brothers Company, Defendant in Error, GREETINGS:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit at the courtroom of said court in the city of San Francisco and State of California, within thirty days from the date of this citation, pursuant to a writ of error on file in the clerk's office of the District Court of the United States in and for the District of Idaho, Central Division, wherein the New Brunswick Fire Insurance Company, a corporation, is plaintiff in error, and Leo Brothers Company is defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable WILLIAM H. TAFT, Chief Justice of the United States, this 5th day of September, 1923.

FRANK S. DIETRICH,
United States District Judge.

[Seal] Attest: W. D. McREYNOLDS,
Clerk.

Service of the foregoing citation admitted and a true copy thereof received this 13th day of Sep-

tember, 1923, all other service and return hereby waived.

FRANK L. MOORE,
Attorney for Plaintiff.

U. S. District Court, District of Idaho. Filed Sep. 22, 1923. W. D. McReynolds, Clerk. By M. Franklin, Deputy. [186]

In the District Court of the United States, Central Division, District of Idaho.

No. 784.

CONSOLIDATED CASES.

No. 785.

LEO BROTHERS COMPANY, a Corporation,
Plaintiff,

vs.

NORWICH UNION FIRE INSURANCE SOCIETY, LTD., OF NORWICH AND LONDON, ENGLAND, a Corporation,
Defendant.

and

LEO BROTHERS COMPANY, a Corporation,
Plaintiff,

vs.

THE NEW BRUNSWICK FIRE INSURANCE COMPANY, a Corporation,
Defendant.

Order Waiving Supersedeas Bond.

On stipulation of parties hereto, it is ordered that supersedeas bond in the above-entitled consolidated actions be waived, and that no execution upon the judgments in said actions be taken until remittiturs from the Circuit Court of Appeals be filed herein.

Done this 5th day of September, 1923.

FRANK S. DIETRICH,
District Judge.

U. S. District Court, District of Idaho. Filed Sep. 5, 1923. W. D. McReynolds, Clerk. [187]

In the District Court of the United States, District of Idaho, Central Division.

Nos. 784 and 785.

CONSOLIDATED CASES HERETO.

LEO BROTHERS COMPANY, a Corporation,
Plaintiff,

vs.

NORWICH UNION FIRE INSURANCE SOCIETY, LIMITED, OF NORWICH AND LONDON, ENGLAND, a Corporation,
Defendant.

LEO BROTHERS COMPANY, a Corporation,
Plaintiff,

vs.

THE NEW BRUNSWICK FIRE INSURANCE COMPANY, a Corporation,
Defendant.

Praecipe for Transcript to Circuit Court of Appeals.

To the Clerk of the Above-entitled Court.

You will please prepare and transmit to the Clerk of the Circuit Court of Appeals for the Ninth Circuit, a true copy of the record in the above-entitled consolidated causes, which shall contain a record of all the proceedings herein, opinion, or opinions of the Court, bill of exceptions, assignments of error and all proceedings in said consolidated cases, together with the original writs of error and citations and a certificate under your seal, stating in detail the cost of the record and by whom paid.

C. J. ORLAND,
Moscow, Idaho,
E. EUGENE DAVIS,
Spokane, Washington,
Attorneys for Defendants.

U. S. District Court, District of Idaho. Filed Sep. 22, 1923. W. D. McReynolds, Clerk. [188]

In the District Court of the United States for the District of Idaho, Central Division.

Nos. 784 and 785.

LEO BROTHERS COMPANY, a Corporation,
Plaintiff,

vs.

NORWICH UNION FIRE INSURANCE SOCIETY, LIMITED, OF NORWICH AND LONDON, ENGLAND, a Corporation,
Defendant.

LEO BROTHERS COMPANY, a Corporation,
Plaintiff,

vs.

NEW BRUNSWICK FIRE INSURANCE COMPANY, a Corporation,
Defendant.

Order to Transmit Exhibits.

It is hereby ordered that the original exhibits used in the trial of the above-entitled consolidated causes in the United States District Court be, by the clerk of said Court, transmitted with the transcript on appeal to the United States Circuit Court of Appeals at San Francisco, California.

Done in open court this 22d day of September, 1923.

FRANK S. DIETRICH,
Judge.

U. S. District Court, District of Idaho. Filed Sep. 22, 1923. W. D. McReynolds, Clerk. [189]

In the District Court of the United States for the District of Idaho, Central District.

Nos. 784 and 785.

LEO BROTHERS COMPANY, a Corporation,
Plaintiff,

vs.

THE NEW BRUNSWICK FIRE INSURANCE COMPANY, a Corporation,
Defendant,

and

LEO BROTHERS COMPANY, a Corporation,

vs.

NORWICH UNION FIRE INSURANCE COMPANY,
Defendant.

Stipulation Re Printing of Record.

It is hereby stipulated between the parties hereto, through their respective attorneys of record, that in printing the record of the above-entitled cases the following parts and portions thereof be omitted:

In the Case of Leo Brothers Company versus the New Brunswick Fire Insurance Company the Summons, Notice, Petition for Removal, Bond and Order of Removal Demurrer, and Answer in said case, it being stipulated that the Answer in said case consists of specific denials of all of the Com-

plaint except Paragraphs #1 and #2, which are admitted.

In the case of Leo Brothers Company versus the Norwich Union Fire Insurance Company the Summons, Notice, Petition for Removal, Bond and Order of Removal, Demurrer, and Answer in said case, it being stipulated [190] that the Answer consists of specific denials of all of the Complaint except Paragraphs #1 and #2 which are admitted.

Plaintiff's Exhibits #1 and #2 may be omitted it being stipulated that the exhibits attached to the Complaint are true copies thereof.

Defendant's Exhibits #12 and #13 and Plaintiff's Exhibits #14, #15, #16, #17 and #20, and also the testimony of witnesses Tillman D. Gerlough, R. E. Nidag, G. A. Riley, W. C. Webster may be omitted, the said exhibits and testimony relating only to the amount of recovery, it being stipulated that the plaintiff in error is urging no error thereon.

Defendant's Exhibits #4, #5, #6 and #11 and Plaintiff's Ex. #? may be omitted.

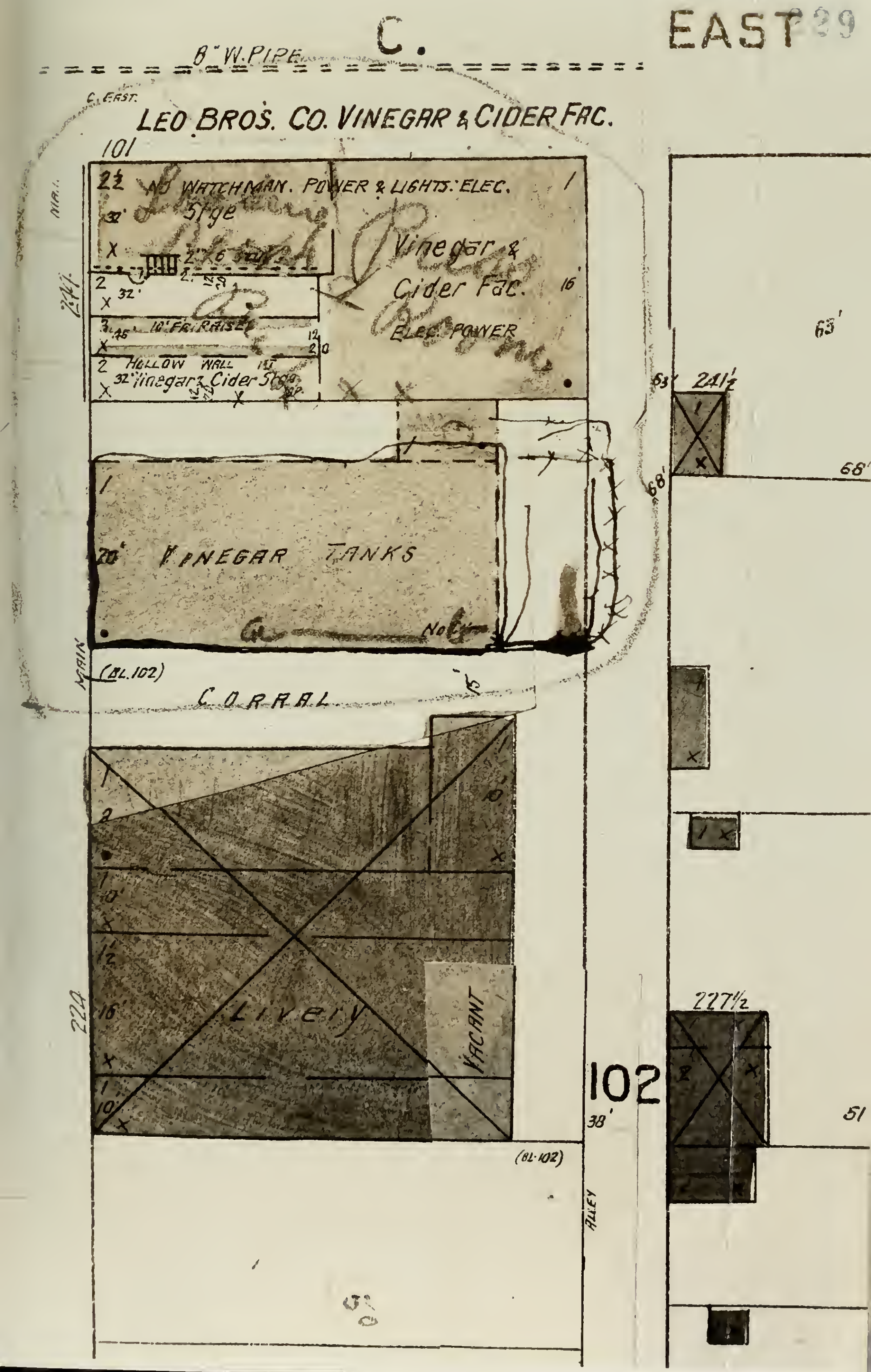
Defendant's Exhibit 8–C, being the daily report of the Home Insurance Company's Policy #4972, may be omitted as being identical with Defendant's Exhibit #8 except as to the number of the Policy.

Defendant's Exhibit #18, being the book of Tariff Rates and Rules and Defendant's Exhibit #19, being the book of Specific Rates of Moscow,

may be omitted, it being stipulated that said books be referred to and be made a part of the record.

FRANK L. MOORE,
Attorney for Plaintiffs.
C. J. ORLAND,
E. EUGENE DAVIS,
Attorneys for Defendants.

U. S. District Court, District of Idaho. Filed Nov. 8, 1923. W. D. McReynolds, Clerk. [191]


C.
EAST
8" W. PIPE
C. EAST.
LEO BROS. CO. VINEGAR & CIDER FAC.
101
NO WATCHMAN. POWER & LIGHTS: ELEC.
Stge
Vinegar & Cider Fac.
ELEC. POWER
10' FR. RAISED
HOLLOW WALL
Vinegar & Cider Stge
241
241½
63'
68'
VINEGAR TANKS
MAIN
(BL. 102)
CORRAL
Livery
VACANT
224
227½
102
38'
51
ALLEY

Defendant's Exhibit No. 7.

MAIN STREET—EAST SIDE

Moscow, Idaho P-3

No. of Rating	Location	Class	Occupation	Bldg.	Cents.	Rating Takes Effect
1	C and A. Streets—Block 102					
2	SE c C (244)	C–D	Vinegar Factory	250	250	
3	South	D	Vinegar Tanks	245	245	Oct. 15–19
4	South (224)	D	*Warehouse	340	340	April 1–20
5	South (210)	C	Office	100	100	
6	NE c A (200)	C	Dwelling	45	45	
7	A and First—Block 101					
8	SE c A (124–122)	I–C	B–VIdaho Hotel	285	285	
9	South (114)	C	Two-story Brick	90	102	April 9–18
10	NE c First (102–108)	C	Two-story Brick	94	135	April 9–18
11			Offices		94	April 9–18
12	First and Second—Block 1					
13	SE c 1st (102–108½)	C	Three-story Brick	127	152	April 7–21
14	South (112)	C	Two-story Brick	156	185	Nov. 10–19
15			Offices		156	Nov. 10–19
16	NE c 2d (114–116)	C	Two-story Brick	122	137	

MAIN STREET—EAST SIDE

No. of Rating	Location	Class	Occupation	Bldg.	Cents.	Moscow, Idaho P-3 Rating Takes Effect
17			Rooms		127	
18			Bank & Offices		122	
19	East on 2d (110)	C	One-story Brick	107	107	
20	East on 2d (112)	C	One-story Brick	102	121	
21	Second and Third—Block 2					
22	SE c 2d (202–206)	C	One-story Brick	138	150	June 26–19
23			Ladies Furnishings		170	June 26–19
24			Bank & Offices		138	June 26–19
25			Stationery & Book Store		170	June 26–19
26	South (208–214)	C	One-story Brick	129	143	June 26–19
27			Candy Store		173	June 26–19
28			Millinery Store		228	June 26–19
29	Adj. Rear (212½)	C	One-story Brick	110	158	
30	Adj. Rear	C–B–V	Stge. & Ice Cream Plant	180	180	
31	NE c 3d (206–112)	C	Two-story Brick	122	137	
32			Offices		122	
33			Gents. Furn. Store		147	
34			Variety Store		147	

*Rate includes charge for autos. [193]

Correction Sheet No. 60
April 7, 1921

MAIN STREET—EAST SIDE

Moscow, Idaho P-3

No. of Rating	Location	Class	Occupation	Bldg.	Cents.	Rating Takes Effect
1	C and A. Streets—Block 102					
2	SE c C (244)	C-D	Vinegar Factory	250	250	
3	South	D	Vinegar Tanks	245	245	Oct. 15–19
4	South (224)	D	*Warehouse	340	340	April 1–20
5	South (210)	C	Office	100	100	
6	NE c A (200)	C	Dwelling	45	45	
7	A and First—Block 101					
8	SE c A (124–122)	I-C	B–VIdaho Hotel	285	285	
9	South (114)	C	Two-story Brick	90	102	April 9–18
10	NE c First (102–108)	C	Two-story Brick	94	135	April 9–18
11			Offices		94	April 9–18
12	First and Second—Block 1					
13	SE c 1st (102–108½)	C	Three-story Brick	127	152	April 7–21
14	South (112)	C	Two-story Brick	156	185	Nov. 10–19
15			Offices		156	Nov. 10–19
16	NE c 2d (114–116)	C	Two-story Brick	122	137	
17			Rooms		127	

Moscow, Idaho P–3

MAIN STREET—EAST SIDE

No. of Rating	Location		Class	Occupation	Bldg.	Cents.	Rating Takes Effect
18				Bank & Offices		122	
19	East on 2d (110)	C		One-story Brick	107	107	
20	East on 2d (112)	C		One-story Brick	102	121	
21	Second and Third—Block 2						
22	SE c 2d (202–206)	C		One-story Brick	138	150	June 26–19
23				Ladies Furnishings		170	June 26–19
24				Bank & Offices		138	June 26–19
25				Stationery & Book Store		170	June 26–19
26	South (208–214)	C		One-story Brick	129	143	June 26–19
27				Candy Store		173	June 26–19
28				Millinery Store	828		June 26–19
29	Adj. Rear (212½)	C		One-story Brick	110	158	
30	Adj. Rear		C–B–V	Stge. & Ice Cream Plant	180	180	
31	NE c 3d (206–112)	C		Two-story Brick	122	137	
32				Offices		122	
33				Gents. Furn. Store		147	
34				Variety Store		147	

*Rate includes charge for autos. [194]

Defendant's Exhibit No. 8.

☞Mail this the day the policy is written.

Moscow, Idaho 3776–71

No. 4965 DAILY REPORT Commission

No. of Previous Policy.... ....%

THE HOME INSURANCE COMPANY, NEW YORK.

Map: Sheet No. 4

Block No. 102

Street No. 240

Other Insurance in This Company on or in Premises—.....

Class No..... Bp. Bu. Fp. Fu. Su. Sp.

Insurance in other Companies .....

....

Amount, $5,000.00 Rate 245 Premium, $122.50

Special Rating $\frac{\text{Page}}{\text{Card}}$ Line No. —— C. R. ——

F. R. ——

Premium: One Hundred Twenty-two and 50/100 Dollars.

Assured: LEO BROTHERS COMPANY.

Term: One year, from the Twenty-second day of September, 1920, at noon, to the Twenty-second day of September, 1921, at noon.

Against loss or damage by FIRE.

Amount—Five Thousand and No/100 Dollars.

EXACT COPY OF FORM ON POLICY:

Standard Forms Bureau Form 367

MERCHANDISE AND FIXTURES FORM

On the following described property, all situate at No. 240 on the East side of Main Street, between "A" and "C" Streets, in Moscow, Idaho.

*1. $5000.00 On merchandise of every description, consisting principally of Vinegar & Vinegar Stock manufactured or in process of manufacture, and on materials for manufacturing same, including packages, labels, cases, boxes and all wrapping and packing materials, being the property of insured or sold but not removed; and (provided the insured shall be liable by law for loss or damage thereto or shall have specifically assumed liability therefor), this insurance shall also cover merchandise held in trust, or on commission, or left for storage or repairs; all only while contained in the one story shingle roof, frame building and its additions (if any) of like construction and communicating and in contact therewith, situate as above.

*2. $ Nil On store, office and workshop furniture and fixtures and equipment; and on awnings, implements, signs and tools; and on supplies incidental to the business of insured not

described under Item 1 above; all only while contained in, on or attached to above described building and its additions (if any) of like construction communicating and in contact therewith.

*3. $ Nil On .....
....

*4. $ Nil On .....
....

*No insurance attaches under any of the above items unless a certain amount is specified and inserted in the blank immediately preceding the item.

Loss or damage for which insured shall be liable by law, or for which insured shall have specifically assumed liability, under item 1 above, shall be adjusted with and payable to the insured named in this policy.

"Restriction in Case of Specific Insurance." No article or piece of personal property separately insured for a specific amount under this, or any other policy, is covered by this policy except for such specific amount, if any, named herein; nor shall this company be liable for loss to merchandise of others for which the insured is liable by law or shall have specifically assumed liability, on which insurance is carried by or in the name of others than the insured named in this policy.

"Sidewalk Clause." It is understood that property above described is also covered under its respective items, on sidewalks, platforms and alley-

ways pertaining to above described building, only while in daily transit to and from said building.

Other insurance permitted.

The provisions printed on the back of this form are hereby referred to and made a part hereof.

Attached to Policy No. 4965 of the Home Insur-
Name of Company
ance Co.

Agency at Moscow, Idaho. Dated Sept. 21, 1920.

Trade mark	INSURANCE MAP.
STANDARD	Sheet 4
367	Block 102
May 1918	No. 240

VEATCH REALTY CO.,
Agent.

For other provisions see reverse side of this rider.

Provisions referred to in and made part of this rider (No. 367).

"Permits." Permission granted to make alteration or repairs to the above described building without limit of time, and to build additions, and if of like construction and communicating and in contact therewith, this policy shall cover in same under its respective items; permission also granted to do such work in said building as the nature of the occupancy may require; to work at any and all times; and, when not in violation of law or ordinance, to generate illuminating gas or vapor, and to keep and use the necessary quantities of all articles, things and materials incidental to the business conducted therein and for the operation of said building, it being warranted by insured that no artificial light

(other than incandescent electric light) be permitted in the room when the reservoir of any machine or device using petroleum or any of its products of greater inflammability than kerosene oil is being filled or drawn on. A breach of this warranty suspends this insurance during such breach. But notwithstanding anything herein contained, the use, keeping, allowing or storing on the within described premises of dynamite, fireworks, Greek fire, gunpowder in excess of fifty pounds, nitroglycerine or other explosives is prohibited and shall wholly suspend this policy during the period such use, keeping, allowing or storing shall continue unless a specific permit therefor is attached to this policy.

"Lightning Clause." This policy shall cover any direct loss or damage by lightning (meaning thereby the commonly accepted use of the term "lightning" and in no case to include loss or damage by cyclone, tornado or windstorm) not exceeding the sum insured nor the interest of the insured in the property, and subject in all other respects to the terms and conditions of this policy; Provided, however, that if there shall be any other insurance on said property this company shall be liable only *pro rata* with such other insurance for any direct loss by lightning whether such other insurance be against direct loss by lightning or not.

"Electrical Exemption Clause." If dynamos, wiring, lamps, motors, switches or other electrical appliances or devices are insured by this policy, this insurance shall not cover any immediate loss or damage to dynamos, exciters, lamps, motors, switches, or

any other apparatus for generating, utilizing, testing, regulating, or distributing electricity, caused directly by electric currents therein whether artificial or natural.

This report mailed Sept. 21, 1920.

VEATCH REALTY CO.,
Agent. [195]

Defendant's Exhibit No. 8A.

LIVERPOOL & LONDON & GLOBE INSURANCE COMPANY, LTD.

Agency at Moscow, Idaho.

Amount Insured, $10,000.00
Rate, 245%.
Premium, $245.00.
New Policy No. 113060.
Date of Exp., Nov. 19, 1921.
Renewal of No. 971191.

INSTRUCTIONS.—Report every Policy on the day it is issued. Give a full verbatim copy of the issue. Fill every blank in this sheet and have all the questions answered. Be particular in ascertaining the total amount of insurance on the property, and see that all policies are concurrent. Do not use this blank for reporting endorsements.

INSURANCE HAS BEEN GRANTED

To LEO BROTHERS COMPANY, of Moscow, Idaho, in the sum of TEN THOUSAND and No/100 DOLLARS.

Standard Forms Bureau Form 367.

MERCHANDISE AND FIXTURES FORM.

On the following described property, all situate

No. 240 on the East side of Main Street between "A" and "C" Streets, in Moscow, Idaho.

*1.	$10,000.00	On merchandise of every description, consisting principally of Cider Vinegar & Cider Vinegar Stock manufactured or in process of manufacture, and on materials for manufacturing same, including packages, labels, cases, boxes and all wrapping and packing materials, being the property of insured or sold but not removed; and (Provided the insured shall be liable by law for loss or damage thereto or shall have specifically assumed liability therefor), this insurance shall also cover merchandise held in trust, or on commission, or left for storage or repairs; all only while contained in the One story comp. roof, frame building and its additions (if any) of like construction communicating and in contact therewith, situate as above.
*2.	$ Nil	On store, office and workshop furniture and fixtures and equipment; and on awnings, implements, signs and tools; and on supplies inci-

dental to the business of insured not described under Item 1 above; all only while contained in, on or attached to above described building and its additions (if any) of like construction communicating and in contact therewith.

*3. $ Nil On .....
.....

*4. $ Nil On .....
.....

*No insurance attaches under any of the above items unless a certain amount is specified and inserted in the blank immediately preceding the item.

Loss or damage for which insured shall be liable by law, or for which insured shall have specifically assumed liability, under item 1 above, shall be adjusted with and payable to the insured named in this policy.

"Restriction in Case of Specific Insurance." No article or piece of personal property separately insured for a specific amount under this, or any other policy, is covered by this policy except for such specific amount, if any, named herein; nor shall this company be liable for loss to merchandise of others for which the insured is liable by law or shall have specifically assumed liability, on which insurance is carried by or in the name of others than the insured named in this policy.

"Sidewalk Clause." It is understood that property above described is also covered under its re-

spective items, on sidewalks, platforms and alleyways pertaining to above described building, only while in daily transit to and from said building.

Other insurance permitted.

The provisions printed on the back of this form are hereby referred to and made a part hereof.

Attached to Policy No. 113060 of the Liverpool & London & Globe Ins.

Name of Company

Agency at Moscow, Idaho, Dated Nov. 13, 1920.

Trade Mark	INSURANCE MAP
STANDARD	Sheet 4
367	Block 102
May 1918	No. 240

VEATCH REALTY CO.,
Agent.

For Other provisions see Reverse Side of this Rider.

Provisions Referred to in and Made Part of this Rider (No. 367)

"Permits." Permission granted to make alteration or repairs to the above described building without limit of time, and to build additions, and if of like construction and communicating and in contact therewith, this policy shall cover in same under its respective items; permission also granted to do such work in said building as the nature of the occupancy may require; to work at any and all times; and, when not in violation of law or ordinance, to generate illuminating gas or vapor, and to keep and use the necessary quantities of all articles, things and materials incidental to the business conducted therein and for the operation of said building, it

being warranted by insured that no artificial light (other than incandescent electric light) be permitted in the room when the reservoir of any machine or device using petroleum or any of its products of greater inflammability than kerosene oil is being filled or drawn on. A breach of this warranty suspends this insurance during such breach. But notwithstanding anything herein contained, the use, keeping, allowing, or storing on the within described premises of dynamite, fireworks, Greek fire, gunpowder in excess of fifty pounds, nitro glycerine or other explosives is prohibited and shall wholly suspend this policy during the period such use, keeping, allowing or storing shall continue unless a specific permit therefor is attached to this policy.

"Lightning Clause." This policy shall cover any direct loss or damage by lightning (meaning thereby the commonly accepted use of the term "lightning" and in no case to include loss or damage by cyclone, tornado or windstorm) not exceeding the sum insured nor the interest of the insured in the property, and subject in all other respects to the terms and conditions of this policy; Provided, however, that if there shall be any other insurance on said property this company shall be liable only *pro rata* with such other insurance for any direct loss by lightning whether such other insurance be against direct loss by lightning or not.

"Electrical Exemption Clause." If dynamos, wiring, lamps, motors, switches or other electrical appliances or devices are insured by this policy,

this insurance shall not cover any immediate loss or damage to dynamos, exciters, lamps, motors, switches, or any other apparatus for generating, utilizing, testing, regulating, or distributing electricity, caused directly by electric currents therein whether artificial or natural.

Term one year from November 19, 1920, to November 19, 1921. Concurrent insurance in the following companies, viz.: .....

Map—Sheet 4. Block 102. Street No. 240.

Special Rate—Page —— Line ——.

Mailed Nov. 13, 1920.

VEATCH REALTY CO.,
Agent. [196]

Defendant's Exhibit No. 8B.

Every Policy or Endorsement Must be Reported the Same Day the Order is Received.

Daily Report.
UNITED STATES
FIRE INSURANCE COMPANY
OF NEW YORK.
Pacific Department.
WM. W. ALVERSON, Manager.
266 Bush Street San Francisco.
This Space Reserved for Company's Use.
Total net line.

On Same $..... F. R..... Within 100 Feet $..... M. R..... Class No. .....

Classification: Vol. ..... Sheet 4. Block 102.

Amount $1250.00. Rate 245. Premium $30.62.

Policy No. C41418. Written in Place of No. .....

Renewal of No. 874799. Agency: Moscow, Idaho. Ledger ..... Comn. $..... %.... Rate Card No. .... Line No. .....

Thirty and 62/100 dollars premium

Does insure Leo Brothers Company for the term of one year from the twenty-third day of September, 1920, at noon, to the twenty-third day of September, 1921, at noon. Amount: twelve hundred fifty and no/100 dollars.

Copy of Policy

Standard Forms Bureau Form 76.

BUILDING FORM (MERCANTILE)

On the following described property, all situate at No. 240 on the east side of Main Street, between "C" and "A" Streets, in Moscow, Idaho.

*1. $250.00 On the one story shingle roof frame building and its additions (if any) of like construction communicating and in contact therewith, including foundations, sidewalks, plumbing, electrical wiring and stationary heating and lighting apparatus and fixtures; also all permanent fixtures, awnings, wall and ceiling decorations and frescoes, stationary scales and elevators, belonging to and constituting a part of said building, only while occupied for storage of vinegar purposes.

*2. $1000.00 On tanks, all while contained in the above described building.

*3. $ Nil On .....

.....

*No insurance attaches under any of the above items unless a certain amount is specified and inserted in the blank immediately preceding the item.

Other insurance permitted.

Loss, if any, subject however to all the terms and conditions of this policy, payable to .....

"Tenants' Improvements" separately insured for a specific amount under this, or any other policy, are not covered by this policy except for such specific amount, if any, named herein.

The provisions printed on the back of this form are hereby referred to and made a part hereof.

Attached to Policy No. C41418 of the United
Name of Company
States Fire Ins. Co.

Agency at Moscow, Idaho.

Dated Sept. 21, 1920.

Trade Mark	INSURANCE MAP.
STANDARD	Sheet 4
76	Block 102
May 1918	No. 240

FRED VEATCH, Agent.

For Other Provisions See Reverse Side of this Rider.

Provisions Referred to in and Made Part of this Rider (No. 76)

"Vacancy." If the building described hereunder is located within the incorporate limits of a city or town, permission is hereby granted for same to remain vacant or unoccupied without limit of time.

"Permits." Permission granted to make alteration or repairs to the above described building without limit of time, and to build additions, and if of like construction and communicating and in contact therewith, this policy shall cover on same under its respective items pertaining thereto; permission also granted to do such work in said building as the nature of the occupancy may require; to work at any and all times; and, when not in violation of law or ordinance, to generate illuminating gas or vapor, and to keep and use the necessary quantities of all articles, things and materials incidental to the business conducted therein and for the operation of said building, it being warranted by insured that no artificial light (other than incandescent electric light) be permitted in the room when the reservoir of any machine or device using petroleum or any of its products of greater inflammability than kerosene oil is being filled or drawn on. A breach of this warranty suspends this insurance during such breach. But notwithstanding anything herein contained, the use, keeping, allowing, or storing on the within described premises of dynamite, fireworks, Greek fire, gunpowder in excess of fifty pounds, nitro glycerine or other explosives is prohibited and shall wholly suspend this policy during the period such use, keeping, allowing or storing shall continue unless a specific permit therefor is attached to this policy.

"Lightning Clause." This policy shall cover any direct loss or damage by lightning (meaning thereby the commonly accepted use of the term

"lightning" and in no case to include loss or damage by cyclone, tornado or windstorm) not exceeding the sum insured nor the interest of the insured in the property, and subject in all other respects to the terms and conditions of this policy; Provided, however, that if there shall be any other insurance on said property this company shall be liable only *pro rata* with such other insurance for any direct loss by lightning whether such other insurance be against direct loss by lightning or not.

"Electrical Exemption Clause." If dynamos, wiring, lamps, motors, switches or other electrical appliances or devices are insured by this policy, this insurance shall not cover any immediate loss or damage to dynamos, exciters, lamps, motors, switches, or any other apparatus for generating, utilizing, testing, regulating, or distributing electricity, caused directly by electric currents therein whether artificial or natural.

Daily report mailed Sept. 21, 1920.

FRED VEATCH,
Agent. [197]

Defendant's Exhibit No. 9.

Daily Report, or Application.

NORWICH UNION FIRE INSURANCE SOCIETY, LTD.

Established 1797.

Head Office No. ————.

Moscow, Idaho, Agency. Veatch Realty Co., Agent.

Policy No. 1064. Renewal of New. Name of Assured (write it plainly) Leo Brothers Company.

Amount $5000.00. Rate 250. Premium ~~$225.00~~ $125.00. Corrected to ~~$225.00~~ $125.00. Commencement Dec. 21st, 1920. Term one year. Expiration December 21st, 1921.

Map and Rate Reference: Map .... Sheet No. 4. Block No. 102. Street No. 244. Rate Book Page 3. Line No. 2.

Home Office Space Risk $..... Block $..... Re. In. $..... Re. Out. $.....

COPY OF WRITTEN PORTION OF POLICY. Standard Forms Bureau Form 367.

MERCHANDISE AND FIXTURES FORM.

On the following described property, all situate No. 244 on the east side of Main Street, between "A" and "C" Streets, in Moscow, Idaho.

*1. $5000.00 On merchandise of every description, consisting principally of vinegar and vinegar stock, manufactured or in process of manufacture, and on materials for manufacturing same, including packages, labels, cases, boxes and all wrapping and packing materials, being the property of insured or sold but not removed; and (provided the insured shall be liable by law for loss or damage thereto or shall have specifically assumed liability therefor), this insurance shall also cover merchandise held in trust, or on commission, or left for storage or repairs; all only while contained in

the three story comp. roof, brick and frame building and its additions (if any) of like construction communicating and in contact therewith, situate as above.

*2. $ Nil On store, office and workshop furniture and fixtures and equipment; and on awnings, implements, signs and tools; and on supplies incidental to the business of insured not described under Item 1 above; all only while contained in, on or attached to above described building and its additions (if any) of like construction communicating and in contact therewith.

*3. $ Nil On .....
.....

*4. $ Nil On .....
.....

*No insurance attaches under any of the above items unless a certain amount is specified and inserted in the blank immediately preceding the item.

Loss or damage for which insured shall be liable by law, or for which insured shall have specifically assumed liability, under item 1 above, shall be adjusted with and payable to the insured named in this policy.

"Restriction in Case of Specific Insurance." No article or piece of personal property separately insured for a specific amount under this, or any other policy, is covered by this policy except for such

specific amount, if any, named herein; nor shall this company be liable for loss to merchandise of others for which the insured is liable by law or shall have specifically assumed liability, on which insurance is carried by or in the name of others than the insured named in this policy.

"Sidewalk Clause." It is understood that property above described is also covered under its respective items, on sidewalks, platforms and alleyways pertaining to above described building, only while in daily transit to and from said building.

Other insurance permitted.

The provisions printed on the back of this form are hereby referred to and made a part hereof.

Attached to Policy No. 1064 of the Norwich Union

Name of Company

Fire Ins. Co. Agency at Moscow, Idaho. Dated December 21, 1921.

Trade Mark
STANDARD
367
May 1918

INSURANCE MAP
Sheet 4
Block 102
No. 244
VEATCH REALTY CO.,
Agent.

For Other Provisions See Reverse Side of this Rider.

Provisions Referred to in and Made Part of this Rider (No. 367).

"Permits." Permission granted to make alteration or repairs to the above described building without limit of time, and to build additions, and if of

like construction and communicating and in contact therewith, this policy shall cover in same under its respective items; permission also granted to do such work in said building as the nature of the occupancy may require; to work at any and all times; and, when not in violation of law or ordinance, to generate illuminating gas or vapor, and to keep and use the necessary quantities of all articles, things and materials incidental to the business conducted therein and for the operation of said building, it being warranted by insured that no artificial light (other than incandescent electric light) be permitted in the room when the reservoir of any machine or device using petroleum or any of its products of greater inflammability than kerosene oil is being filled or drawn on. A breach of this warranty suspends this insurance during such breach. But notwithstanding anything herein contained, the use, keeping, allowing, or storing on the within described premises of dynamite, fireworks, Greek fire, gunpowder in excess of fifty pounds, nitro glycerine or other explosives is prohibited and shall wholly suspend this policy during the period such use, keeping, allowing or storing shall continue unless a specific permit therefor is attached to this policy.

"Lightning Clause." This policy shall cover any direct loss or damage by lightning (meaning thereby the commonly accepted use of the term "lightning" and in no case to include loss or damage by cyclone, tornado or windstorm) not exceeding the sum insured nor the interest of the insured in the property, and subject in all other respects to the terms

and conditions of this policy; Provided, however, that if there shall be any other insurance on said property this company shall be liable only *pro rata* with such other insurance for any direct loss by lightning whether such other insurance be against direct loss by lightning or not.

"Electrical Exemption Clause." If dynamos, wiring, lamps, motors, switches or other electrical appliances or devices are insured by this policy, this insurance shall not cover any immediate loss or damage to dynamos, exciters, lamps, motors, switches, or any other apparatus for generating, utilizing, testing, regulating, or distributing electricity, caused directly by electric currents therein whether artificial or natural.

Date Dec. 21, 1920.

VEATCH REALTY CO.,
Agent. [198]

Defendant's Exhibit No. 10.

Every Policy or Endorsement Must be Reported the Same Day the Order is Received.

Daily Report.

NEW BRUNSWICK FIRE INSURANCE COMPANY OF NEW YORK.

Pacific Department.

WM. W. ALVERSON, Manager.

266 Bush Street San Francisco.

This Space Reserved for Company's Use.

Total Net Line.

On Same $..... F. R..... Within 100 Feet $..... M. R..... Class No. .....

Classification: Vol. ..... Sheet 4. Block 102.

Amount $6000.00. Rate 250. Premium $150.00. Policy No. 911476. Written in Place of No. ..... Renewal of No. ..... Agency Moscow, Idaho. Ledger .... Comn. $..... %..... Rate Card No. ..... Line No. .....

One hundred fifty and no/100 dollars premium Does insure Leo Brothers Company for the term of one year from the twenty-eighth day of July, 1920, at noon, to the twenty-eighth day of July, 1921, at noon. Amount six thousand and no/100 dollars.

Copy of Policy.

Standard Forms Bureau Form 367.

MERCHANDISE AND FIXTURES FORM.

On the following described property, all situate No. 244 on the southeast corner of Main and "C" Streets, in Moscow, Idaho.

*1. $6000.00 On merchandise of every description, consisting principally of cider vinegar manufactured or in process of manufacture, and on materials for manufacturing same, including packages, labels, cases, boxes and all wrapping and packing materials, being the property of insured or sold but not removed; and (provided the insured shall be liable by law for loss or damage thereto or shall have specifically assumed liability therefor), this insurance shall also cover merchandise held in trust, or on commission, or left for storage or repairs; all only

while contained in the three story comp. roof, brick and one story frame building and its additions (if any) of like construction communicating and in contact therewith, situate as above.

*2. $ Nil On store, office and workshop furniture and fixtures and equipment; and on awnings, implements, signs and tools; and on supplies incidental to the business of insured not described under Item 1 above; all only while contained in, on or attached to above described building and its additions (if any) of like construction communicating and in contact therewith.

*3. $ Nil On .....
.....

*4. $ Nil On .....
.....

*No insurance attaches under any of the above items unless a certain amount is specified and inserted in the blank immediately preceding the item.

Loss or damage for which insured shall be liable by law, or for which insured shall have specifically assumed liability, under item 1 above, shall be adjusted with and payable to the insured named in this policy.

"Restriction in Case of Specific Insurance." No article or piece of personal property separately insured for a specific amount under this, or any other

policy, is covered by this policy except for such specific amount, if any, named herein; nor shall this company be liable for loss to merchandise of others for which the insured is liable by law or shall have specifically assumed liability, on which insurance is carried by or in the name of others than the insured named in this policy.

"Sidewalk Clause." It is understood that property above described is also covered under its respective items, on sidewalks, platforms and alleyways pertaining to above described building, only while in daily transit to and from said building.

Other insurance permitted.

The provisions printed on the back of this form are hereby referred to and made a part hereof.

Attached to Policy No. 911476 of the New Brunswick Fire Ins. Co. Agency at Moscow, Idaho. Dated July 20, 1920.

Name of Company

Trade Mark
STANDARD
367
May 1918

INSURANCE MAP
Sheet 4
Block 102
No. 244—"D"
FRED VEATCH, Agent.

For Other Provisions See Reverse Side of this Rider.

Provisions Referred to in and Made Part of this Rider (No. 367).

"Permits." Permission granted to make alteration or repairs to the above described building without limit of time, and to build additions, and if of like construction and communicating and in con-

tact therewith, this policy shall cover in same under its respective items; permission also granted to do such work in said building as the nature of the occupancy may require; to work at any and all times; and, when not in violation of law or ordinance, to generate illuminating gas or vapor, and to keep and use the necessary quantities of all articles, things and materials incidental to the business conducted therein and for the operation of said building, it being warranted by insured that no artificial light (other than incandescent electric light) be permitted in the room when the reservoir of any machine or device using petroleum or any of its products of greater inflammability than kerosene oil is being filled or drawn on. A breach of this warranty suspends this insurance during such breach. But notwithstanding anything herein contained the use, keeping, allowing, or storing on the within described premises of dynamite, fireworks, Greek fire, gunpowder in excess of fifty pounds, nitro glycerine or other explosives is prohibited and shall wholly suspend this policy during the period such use, keeping, allowing or storing shall continue unless a specific permit therefor is attached to this policy.

"Lightning Clause." This policy shall cover any direct loss or damage by lightning (meaning thereby the commonly accepted use of the term "lightning" and in no case to include loss or damage by cyclone, tornado or windstorm) not exceeding the sum insured nor the interest of the insured in the property, and subject in all other respects to the terms and conditions of this policy; Provided, however,

that if there shall be any other insurance on said property this company shall be liable only *pro rata* with such other insurance for any direct loss by lightning whether such other insurance be against direct loss by lightning or not.

"Electrical Exemption Clause." If dynamos, wiring, lamps, motors, switches or other electrical appliances or devices are insured by this policy, this insurance shall not cover any immediate loss or damage to dynamos, exciters, lamps, motors, switches, or any other apparatus for generating, utilizing, testing, regulating, or distributing electricity, caused directly by electric currents therein whether artificial or natural.

Daily Report Mailed July 20, 1920.

FRED VEATCH,
Agent. [199]

In the District Court of the United States for the District of Idaho, Central Division.

CONSOLIDATED CAUSES Nos. 784 and 785.

LEO BROTHERS COMPANY, a Corporation,
Plaintiff,

vs.

THE NEW BRUNSWICK FIRE INSURANCE COMPANY, a Corporation,
Defendant,

and

LEO BROTHERS COMPANY, a Corporation,
Plaintiff,

vs.

NORWICH UNION FIRE INSURANCE SOCIETY, LIMITED, a Corporation,
Defendant.

Certificate of Clerk U. S. District Court to Transcript of Record.

I, W. D. McReynolds, clerk of the United States District Court for the District of Idaho, do hereby certify the foregoing to be a full, true and correct copy of so much of the record, papers, exhibits and other proceedings in the above-entitled causes, as the same appear of record in my office, the same constituting the record on appeal herein on the judgment of the United States District Court for the District of Idaho, Central Division, to the United States Circuit Court of Appeals, for the Ninth Circuit, as requested by counsel for the respective parties;

I further certify that the cost of preparing and certifying the foregoing records amounts to the sum of $65.00 and that the said amount has been paid by the appellant herein.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of said court, at Boise, in said district, this 8th day of November, 1923.

[Seal] W. D. McREYNOLDS,
Clerk U. S. District Court. [200]

[Endorsed]: No. 4140. United States Circuit Court of Appeals for the Ninth Circuit. Norwich Union Fire Insurance Society, Limited, of Norwich and London, England, a Corporation, Plaintiff in Error, vs. Leo Brothers Company, a Corporation, Defendant in Error, and the New Brunswick Fire Insurance Company, a Corporation, Plaintiff in Error, vs. Leo Brothers Company, a Corporation, Defendant in Error. Transcript of Record. Upon Writs of Error to the United States District Court of the District of Idaho, Central Division.

Filed November 12, 1923.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,

Deputy Clerk.